

APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001
(Committee on Appropriations)

STATE OFFICIALS

AN ACT making an appropriation for defraying the expenses of various elected and appointed officials of the state of North Dakota; and to create and enact a new section to chapter 57-01 of the North Dakota Century Code, relating to reports by the state tax commissioner to the budget section of the legislative council regarding the auditing enhancement program and settlements of tax assessments and providing for deposit of fees collected by the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 for the purpose of defraying the expenses of the various elected officials of the state of North Dakota, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

GOVERNOR'S OFFICE

Salaries and wages	\$	969,094
Operating expenses		162,779
Equipment		2,500
Governor's office contingency		7,000
Total general fund appropriation	\$	1,141,373

Subdivision 2.

GOVERNOR'S ASSOCIATIONS

Operating expenses	\$	101,900
Total general fund appropriation	\$	101,900

Subdivision 3.

LIEUTENANT GOVERNOR

Salaries and wages	\$	164,730
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Operating expenses	4,110
Equipment	1,500
Lieutenant governor contingency	7,000
Total general fund appropriation	<u>\$ 177,340</u>

Subdivision 4.

SECRETARY OF STATE

Salaries and wages	\$ 866,268
Operating expenses	132,340
Equipment	12,720
Data processing	100,000
Petition review	5,000
Total general fund appropriation	<u>\$ 1,116,328</u>

Subdivision 5.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$ 228,196
Total general fund appropriation	<u>\$ 228,196</u>

Subdivision 6.

ATTORNEY GENERAL

Salaries and wages	\$ 4,757,592
Operating expenses	1,260,929
Data processing	123,265
Equipment	247,483
Grants	596,000
Litigation fees	100,000
Total all funds	<u>\$ 7,085,269</u>
Less estimated income	1,098,280
Total general fund appropriation	<u>\$ 5,986,989</u>

Subdivision 7.

STATE AUDITOR

Salaries and wages	\$ 3,024,678
Operating expenses	336,663
Data processing	44,946
Equipment	15,059
Total all funds	<u>\$ 3,421,346</u>
Less estimated income	299,357
Total general fund appropriation	<u>\$ 3,121,989</u>

Subdivision 8.

STATE TREASURER

Salaries and wages	\$ 499,665
Operating expenses	54,601
Data processing	32,993
Equipment	1,560
Total general fund appropriation	<u>\$ 588,819</u>

Subdivision 9.

STATE TAX COMMISSIONER

Salaries and wages	\$ 7,895,088
Operating expenses	1,701,047
Data processing	1,266,236

Equipment	20,154
Total general fund appropriation	<u>\$10,882,525</u>

Subdivision 10.

INSURANCE COMMISSIONER

Salaries and wages	\$ 1,209,247
Operating expenses	221,954
Data processing	50,696
Equipment	<u>6,904</u>
Total state bonding fund appropriation	<u>\$ 1,488,801</u>

Subdivision 11.

LABOR COMMISSIONER

Salaries and wages	\$ 407,255
Operating expenses	140,050
Equipment	<u>2,185</u>
Total all funds	<u>\$ 549,490</u>
Less estimated income	<u>87,000</u>
Total general fund appropriation	<u>\$ 462,490</u>

Subdivision 12.

PUBLIC SERVICE COMMISSION

Salaries and wages	\$ 3,830,225
Operating expenses	4,331,314
Data processing	743,938
Equipment	<u>172,649</u>
Total all funds	<u>\$ 9,078,126</u>
Less estimated income	<u>4,912,456</u>
Total general fund appropriation	<u>\$ 4,165,670</u>

Subdivision 13.

AGRICULTURE COMMISSIONER

Salaries and wages	\$ 1,859,868
Operating expenses	667,351
Equipment	13,521
Grants	300,000
Data processing	75,490
Agriculture in the classroom	250,000
North Dakota products label	70,000
Honeybee tracheal mite monitoring	<u>45,000</u>
Total all funds	<u>\$ 3,281,230</u>
Less estimated income	<u>553,434</u>
Total general fund appropriation	<u>\$ 2,727,796</u>

Grand total general fund appropriation H.B. 1001	\$30,701,415
Grand total special funds appropriation H.B. 1001	\$ 8,989,328
Grand total all funds H.B. 1001	\$39,690,743

SECTION 2. APPROPRIATION. The moneys herein appropriated for salaries and wages for new positions shall be made available only after certification to the executive office of the budget that the additional employees allowed are actually in the employ of the state.

SECTION 3. APPROPRIATION. There is hereby appropriated, upon the approval of the emergency commission, from special funds derived from federal funds and other income, such moneys as become available during the biennium beginning July 1, 1985, and ending June 30, 1987, to the public service commission of the state of North Dakota, for the purpose of increasing the level of the abandoned mine lands program, and for the purpose of increasing the hydrology monitoring and water sampling and analysis pass-through funds to the United States geological survey.

SECTION 4. APPROPRIATION. There is hereby appropriated, upon the approval of the emergency commission, from special funds derived from federal funds and other income, such moneys as become available during the biennium beginning July 1, 1985, and ending June 30, 1987, to the commissioner of agriculture for the state waterbank program.

SECTION 5. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 6. EXEMPTION. The funds herein appropriated for subdivisions 2, 3, and 5 of section 1 of this Act shall not be subject to the provisions of sections 54-27-10 and 54-27-11 of the North Dakota Century Code, relating to the time during which appropriations become available.

SECTION 7. 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 ending June 30, 1987.

SECTION 8. APPROPRIATION - TRANSFER - ATTORNEY GENERAL. There is hereby authorized, as included in the appropriation for the attorney general in subdivision 6 of section 1 of this Act, a transfer of \$435,000, or so much thereof as may be necessary, from the state fire and tornado fund for the purpose of funding the state fire marshal program including the hazardous material control officer. Such funds shall be transferred by the office of management and budget only at such times as the moneys are required for disbursement by the attorney general.

SECTION 9. REPORTS ON FARM CREDIT COUNSELING PROGRAM. The commissioner of agriculture shall submit a report quarterly to the budget section of the legislative council on the progress and administration of the farm credit counseling program. Each report must include statements as to the number of individuals counseled and expenditures of appropriations.

SECTION 10. A new section to chapter 57-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 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 the reports must contain the total amount assessed as of the end of the quarter and the amounts collected, including a summary reporting major amounts collected.

SECTION 11. FEES COLLECTED BY SECRETARY OF STATE - DEPOSIT IN OPERATING FUND. Any fees collected by the secretary of state pursuant to section 5 of Senate Bill No. 2450 must be deposited in an operating fund, which is hereby created, under the control of the secretary of state.

SECTION 12. APPROPRIATION - SECRETARY OF STATE. There is hereby appropriated \$325,000, or so much thereof as may be necessary, from income derived from collections received pursuant to section 11 of this Act and deposited in the secretary of state operating fund to the secretary of state for the purpose of defraying the expenses of the central notice system for sales of crops and livestock during the biennium ending June 30, 1987.

SECTION 13. LEGISLATIVE INTENT - ACCESS TO AUTOMATED LEGAL RESEARCH. It is the intent of the legislative assembly that the North Dakota supreme court continue the current arrangement with the North Dakota attorney general's office regarding availability and use of automated legal research (Westlaw) during the 1985-87 biennium.

SECTION 14. APPROPRIATION - AUTHORIZATION - PUBLIC SERVICE COMMISSION. The public service commission is hereby authorized to receive and spend any funds received from Montana-Dakota utilities company not exceeding \$50,000 which are hereby appropriated for the purpose of funding the cost of the commission's participation before federal courts and agencies involving the cost of gas to the Montana-Dakota utilities company gas utility. The funds are hereby appropriated during the biennium ending June 30, 1987.

SECTION 15. APPROPRIATION - AUTHORIZATION - ATTORNEY GENERAL. The attorney general is hereby authorized to receive and spend any funds received from political subdivisions not to exceed \$55,000 which are hereby appropriated for the purpose of data processing for gaming enforcement during the biennium ending June 30, 1987.

SECTION 16. APPROPRIATION - AUTHORIZATION - TAX COMMISSIONER. The tax commissioner is hereby authorized to receive and spend any funds received not to exceed \$120,000, which is hereby appropriated, from the city of Grand Forks relating to the administration and collection of the Grand Forks city sales tax during the biennium ending June 30, 1987.

Approved April 15, 1985

CHAPTER 2

HOUSE BILL NO. 1002
(Committee on Appropriations)

SUPERINTENDENT OF PUBLIC INSTRUCTION

AN ACT making an appropriation for defraying the expenses of the superintendent of public instruction of the state of North Dakota; providing for transfers of funds from the federal revenue sharing and displaced homemaker funds; and to amend and reenact section 15-40.1-09 of the North Dakota Century Code as amended by House Bill No. 1549 as approved by the forty-ninth legislative assembly, relating to the determination of payments for per-pupil aid to school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 4,673,046
Operating expenses	2,406,197
Data processing	405,834
Equipment	99,643
Grants - foundation aid	417,982,112
Grants - special education	21,017,218
Grants - school food program	1,260,000
Grants - adult basic education	225,000
Grants - motorcycle safety	350,000
Grants - displaced homemakers	261,872
Grants - boarding care	1,229,844
Grants - federal grants	50,046,996
Total all funds	\$499,957,762
Less estimated income	103,991,414
Total general fund appropriation	\$395,966,348

SECTION 2. APPROPRIATION - TRANSFER. The amount of \$187,000, or such additional amounts as may be available, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred to the superintendent of public instruction operating fund from the federal revenue sharing fund for application to foundation aid grants for the biennium beginning July 1, 1985, and ending June 30, 1987. If the amount transferred exceeds \$187,000, the general fund appropriation in section 1 of this Act shall be reduced by such excess amount.

SECTION 3. INTENT. It is the intent of the legislative assembly that the sum of \$47,895,000, or such greater or lesser sums as become available, included in the Grants - foundation aid and estimated income line items in 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 North Dakota Century Code chapter 15-44 for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 4. APPROPRIATION - TRANSFER. The amount of \$261,872, or so much thereof as is necessary, for the line item entitled Grants - displaced homemakers and included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred to the superintendent of public instruction for the purpose of providing services for displaced homemakers as provided in North Dakota Century Code chapter 14-06.1 for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 5. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 6. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

* **SECTION 7. AMENDMENT.** Section 15-40.1-09 of the North Dakota Century Code as amended by House Bill No. 1549 as approved by the forty-ninth legislative assembly is hereby amended and reenacted to read as follows:

15-40.1-09. Application for payments - Verification and determination of payments for high school students - Report of county superintendent of schools - Appeal. Immediately upon the completion of the registration of students at the beginning of each school term and in no event later than September tenth of each year, the clerk of each school district

* NOTE: Section 15-40.1-09 was also amended by section 3 of House Bill No. 1549, chapter 225.

within or without this state which is claiming payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a claim on a form prescribed by the superintendent of public instruction stating the number of students registered in high school and elementary grades for which payments are claimed, and such other information as may be reasonably requested by the superintendent of public instruction. Not later than December first, the superintendent of public instruction shall certify to the office of management and budget a list of the school districts and schools not operated by school districts entitled to payments from state funds, together with the amounts to which the several districts and schools are entitled. Per-pupil aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership or the current year's fall enrollment, whichever is greater. Adjustments must be made if the per-pupil payments for the previous school year were based on the fall enrollment. If the average daily membership for the previous year is less than the fall enrollment for the previous year, the average daily membership for the previous year must be compared with the average daily membership for the second preceding year in the subsequent year according to a comparison between the average daily membership for the year for which the adjusted payment is being made and the year preceding the year for which the adjusted payment is being made, whichever is greater. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's foundation aid payments. If the average daily membership for the previous year is greater than the previous year's fall enrollment, then the average daily membership for the previous year must be used in calculating any adjustment to a district's foundation aid payments. For purposes of this chapter, "average daily membership" shall mean the total days all students in a given school are in attendance, including days set aside for the North Dakota education association convention, plus any three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after consultation with the teachers, the total days all students are absent, and the two parent-teacher conference days authorized in section 15-47-33, divided by one hundred eighty days. School districts educating children of agricultural migratory workers or offering high school summer school programs during the months of June, July, and August shall not be restricted to payments for a one-hundred-eighty-day school term.

Immediately upon the termination of the school term and in no event later than July fifteenth of each year, the clerk of each school district within or without this state which has received payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a verified statement of the name, residence, and membership of elementary and high school students as provided for in this section, and number of units of high school work taken by each high school student enrolled during the previous school year. Such statement shall be attested to by the county superintendent of schools. The county superintendent shall investigate the validity of the statement and shall determine

the residence and other qualifications of each student named in the statement filed with him. He shall certify to the superintendent of public instruction on or before September first of each year the number of enrolled students in each district in his county for the previous school year upon which any adjustment may be based as provided in this section. If any statement is disallowed in whole or in part, notice thereof and the names of students who are disallowed shall be reported to the superintendent of public instruction and to the district filing the statement. Any district may appeal to the superintendent of public instruction from the determination of the county superintendent of schools on or before September fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

Approved April 15, 1985

CHAPTER 3

HOUSE BILL NO. 1003
(Committee on Appropriations)

OFFICE OF MANAGEMENT AND BUDGET

AN ACT making an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget of the state of North Dakota; to amend and reenact section 54-14-03.1 of the North Dakota Century Code, relating to the office of the budget reporting irregularities to the budget committee of the legislative council; and providing for an exemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

Salaries and wages	\$ 4,276,583
Operating expenses	1,870,236
Data processing	1,500,634
Equipment	56,599
Grants	22,246,380
Surplus property contingency	20,000
Total all funds	\$ 29,970,432
Less estimated income	24,751,773
Total general fund appropriation	\$ 5,218,659

Subdivision 2.

CENTRAL DATA PROCESSING

Salaries and wages	\$ 6,558,765
Operating expenses	13,988,666
Equipment	<u>2,891,780</u>

Total special funds appropriation		\$ 23,439,211
Subdivision 3.		
	STATE PRINTING	
Salaries and wages		\$ 731,137
Operating expenses		1,187,171
Data processing		25,000
Equipment		25,540
Total special funds appropriation		\$ 1,968,848
Grand total general fund appropriation H.B. 1003	\$ 5,218,659	
Grand total special funds appropriation H.B. 1003	\$ 50,159,832	
Grand total all funds appropriation H.B. 1003	\$ 55,378,491	

SECTION 2. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. TRANSFER AUTHORITY. Upon approval of the emergency commission, 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 5. AMENDMENT. Section 54-14-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-03.1. Reports to legislative council budget committee. It shall be the duty of the office of the budget, in the course of the preaudit of claims against the state, or in otherwise carrying out its duties, to note irregularities in the fiscal practices of the state and its departments, agencies, and institutions and areas where more uniform and improved fiscal procedures are desirable, and it shall further note expenditures and governmental activities that it may believe to be contrary to law or to the intent of the legislative assembly. "Irregularities" as used in this section includes the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The office of the budget shall submit a detailed written report accompanied by adequate documentation to the budget committee of the legislative council, or any division of that committee designated for that purpose, setting out the irregularity, expenditure, or activity. The report shall be presented at the next scheduled

meeting of the committee following the discovery of the irregularity, expenditure, or activity.

SECTION 6. EXEMPTION. The data processing appropriation contained in section 1 of chapter 46 of the 1983 Session Laws shall not be subject to the provisions of section 54-44.1-11 of the North Dakota Century Code and any unexpended funds from this appropriation shall be available for continued development of the statewide accounting and management information system during the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 15, 1985

CHAPTER 4

HOUSE BILL NO. 1004
(Committee on Appropriations)

HOMESTEAD TAX CREDIT

AN ACT making an appropriation for the homestead tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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, 1985, and ending June 30, 1987, as follows:

Grants, benefits, and claims	\$ 5,000,000
Total general fund appropriation	\$ 5,000,000

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 11, 1985

CHAPTER 5

HOUSE BILL NO. 1006
(Committee on Appropriations)

DIRECTOR OF INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various divisions under the supervision of the director of institutions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 director of institutions of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

DIRECTOR OF INSTITUTIONS

Salaries and wages	\$ 3,290,902
Operating expenses	3,405,193
Postage revolving fund	10,000
Institutional medical fees	615,000
Equipment	32,839
Capital improvements	866,290
Total all funds	\$ 8,220,224
Less appropriation from capitol building funds	866,290
Total general fund appropriation	\$ 7,353,934

Subdivision 2.

STATE COMMUNICATIONS

Operating expenses	\$ 6,571,322
Data processing	18,731
Total all funds	\$ 6,590,053
Less estimated income	3,294,306
Total general fund appropriation	\$ 3,295,747
Grand total general fund appropriation H.B. 1006	\$ 10,649,681
Grand total special funds appropriation H.B. 1006	\$ 4,160,596
Grand total all funds appropriated H.B. 1006	\$ 14,810,277

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION - TRANSFER. The amount appropriated in section 1 of this Act includes \$866,290 which shall be transferred by the office of management and budget from the capitol building fund for the biennium beginning July 1, 1985, and ending June 30, 1987, as required for disbursement by the director of institutions.

SECTION 4. LEGISLATIVE INTENT - DIRECTOR OF INSTITUTIONS - REPORT TO BUDGET SECTION. It is the intent of the legislative assembly that the director of institutions present a detailed proposal, including alternatives and cost estimates, to the budget section during the 1985-86 interim regarding future plans, including alternatives for the old state office building. The alternatives shall include both renovating and demolishing the old state office building and the construction of a new building.

Approved April 15, 1985

CHAPTER 6

HOUSE BILL NO. 1007
(Committee on Appropriations)

STATE INDUSTRIAL SCHOOL

AN ACT making an appropriation for defraying the expenses of the state industrial school of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 school under the supervision of the director of institutions of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 4,157,192
Operating expenses	1,002,765
Data processing	3,474
Equipment	68,528
Capital improvements	76,943
Total all funds	\$ 5,308,902
Less estimated income	1,473,558
Total general fund appropriation	\$ 3,835,344

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 7

HOUSE BILL NO. 1008
(Committee on Appropriations)

DIVISION OF INDEPENDENT STUDY

AN ACT making an appropriation for defraying the expenses of the division of independent study of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 division of independent study of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$1,218,252
Operating expenses	386,369
Equipment	100,000
Total all funds	\$1,704,621
Less estimated income	1,109,271
Total general fund appropriation	\$ 595,350

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 8

HOUSE BILL NO. 1009
(Committee on Appropriations)

HUMAN SERVICES — STATE HOSPITAL — GOVERNOR'S COUNCIL ON HUMAN RESOURCES

AN ACT making an appropriation for defraying the expenses of the department of human services, state hospital, and the governor's council on human resources; providing for an appropriation and transfer from the land and minerals trust fund to the common schools trust fund; providing legislative intent regarding medical assistance payment determinations and low income home energy assistance payments; and providing the emergency commission with appropriation transfer authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

DEPARTMENT OF HUMAN SERVICES

Salaries and wages	\$ 43,603,861
Operating expenses	19,643,626
Data processing	8,602,175
Equipment	591,081
Grants, benefits, and claims	<u>423,267,602</u>
Total all funds	\$495,708,345
Less estimated income	<u>309,095,162</u>
Total general fund appropriation	\$186,613,183

Subdivision 2.

GOVERNOR'S COUNCIL ON HUMAN RESOURCES

Salaries and wages	\$ 181,471
Operating expenses	139,136
Equipment	1,200
Grants, benefits, and claims	<u>590,882</u>
Total all funds	\$ 912,689

Less estimated income	706,197
Total general fund appropriation	\$ 206,492

Subdivision 3.

STATE HOSPITAL

Salaries and wages	\$ 36,381,176
Operating expenses	5,937,715
Data processing	1,041,255
Equipment	402,899
Capital improvements	137,800
Total all funds	\$ 43,900,845
Less estimated income	13,393,107
Total general fund appropriation	\$ 30,507,738

SECTION 2. APPROPRIATION - TRANSFER. There is hereby appropriated out of any moneys in the land and minerals trust fund, not otherwise appropriated, the sum of \$1,138,124, or so much thereof as may be necessary, 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 facility loan fund program no. 2 for the biennium beginning July 1, 1985, and ending June 30, 1987.

Grand total general fund appropriation H.B. 1009	\$217,417,413
Grand total special funds appropriation H.B. 1009	\$324,487,590
Grand total all funds appropriation H.B. 1009	\$541,905,003

SECTION 3. STAFF TRAINING AND STIPEND PROGRAM. It is the intent of the legislative assembly that the department of human services develop and implement a staff training and stipend program for advanced academic studies, practicums, and training in the human service field, including psychology, occupational therapy, vocational rehabilitation, social work, and addiction counseling. During the biennium, beginning July 1, 1985, and ending June 30, 1987, an amount not to exceed \$332,000 in the budget categories for salary and wages shall be available for purposes of implementing the staff training and stipend program.

SECTION 4. EMERGENCY COMMISSION - TRANSFERS. The emergency commission, notwithstanding North Dakota Century Code section 54-16-04, shall have the authority during the biennium beginning July 1, 1985, to approve the transfer of appropriations made to the Grafton state school and San Haven to the department of human services to the extent necessary to match federal medicaid funds in excess of the amounts included in section 1 of this Act for that purpose. The emergency commission shall also have the authority to approve the transfer of appropriations back to the Grafton state school and San Haven not considered necessary at a later time by the department of human services for this purpose.

SECTION 5. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after

certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 6. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 7. LEGISLATIVE INTENT. The legislative assembly recognizes the need to achieve the effective limitation of costs while providing for payment rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards. It is the intent of the legislative assembly that Senate Concurrent Resolution No. 4002 not be regarded as a deterrent to the achievement of these recognized needs. It is the further intent of the legislative assembly that the department seek to achieve cost savings through a variety of waiver options to certain requirements for the state plan for medical assistance benefits, including, but not limited to, competitive bidding for certain services, primary case management systems, restriction of specialty services to designated providers, central broker services, restriction of recipient-free choice, preferred provider-type innovations to providing services, the use of a drug formulary, and the introduction of rate limitation methodologies which may represent approved or approvable amendments to the state plan.

SECTION 8. LEGISLATIVE INTENT - LOW INCOME HOME ENERGY ASSISTANCE PAYMENT - PRORATION. It is the intent of the legislative assembly that should sufficient funds not be available to fully fund within the amounts allocated by the legislative assembly for the low income home energy assistance program during the 1985-87 biennium, the department in lieu of changing eligibility guidelines shall reduce by the same percentage all recipient payments to achieve the necessary reduction.

SECTION 9. APPROPRIATION - BUDGET SECTION. There is hereby appropriated to the department of human services any additional federal funds which become available as a result in changes to the federal financial participation rate during the biennium beginning July 1, 1985, and ending June 30, 1987. If the \$3,400,000 of additional federal funds relating to the limitation on the drop in the rate of federal financial participation does not become available, the department of human services shall report to the budget section the amount of the resulting deficiency appropriation that will be introduced to the fiftieth legislative assembly.

SECTION 10. APPROPRIATION - LONG-TERM CARE FACILITY PAYMENTS. There is hereby appropriated \$155,000 in federal and other funds, and \$90,000 from the general fund in the state treasury, or so much thereof as may be necessary, to the department of human services for the purpose of additional payments to long-term care facilities as required by Senate Bill No. 2053 for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 16, 1985

CHAPTER 9

HOUSE BILL NO. 1010
 (Committee on Appropriations)

**GRAFTON STATE SCHOOL, SAN HAVEN,
 COURT MONITOR, AND PROTECTION AND
 ADVOCACY PROJECT**

AN ACT making an appropriation for defraying the expenses of the Grafton state school, San Haven, protection and advocacy project, and deinstitutionalization court monitor of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 Grafton state school and San Haven under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

GRAFTON STATE SCHOOL

Salaries and wages	\$ 40,392,732
Operating expenses	6,469,204
Data processing	30,351
Equipment	311,396
Capital improvements	<u>245,000</u>
Total all funds	\$ 47,448,683
Less estimated income	<u>26,516,869</u>
Total general fund appropriation	\$ 20,931,814

Subdivision 2.

SAN HAVEN

Salaries and wages	\$ 11,783,031
Operating expenses	2,856,184
Data processing	13,000
Equipment	207,649
Capital improvements	<u>300,000</u>
Total all funds	\$ 15,159,864
Less estimated income	<u>10,144,698</u>
Total general fund appropriation	\$ 5,015,166

Subdivision 3.

PROTECTION AND ADVOCACY PROJECT

Salaries and wages	\$	837,159
Operating expenses		217,006
Data processing		29,350
Equipment		<u>2,062</u>
Total all funds	\$	<u>1,085,577</u>
Less estimated income		<u>300,000</u>
Total general fund appropriation	\$	785,577

Subdivision 4.

DEINSTITUTIONALIZATION - COURT MONITOR

Operating expenses	\$	209,222
Total general fund appropriation	\$	209,222
Grand total general fund appropriation H.B. 1010	\$	26,941,779
Grand total special funds appropriation H.B. 1010	\$	36,961,567
Grand total all funds appropriation H.B. 1010	\$	63,903,346

SECTION 2. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 16, 1985

CHAPTER 10

HOUSE BILL NO. 1011
 (Committee on Appropriations)

STATE LIBRARY

AN ACT making an appropriation for defraying the expenses of the state library of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 library under the supervision of the director of institutions of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 1,081,990
Operating expenses	599,997
Data processing	10,000
Equipment	2,580
Grants, benefits, and claims	<u>1,304,809</u>
Total all funds	\$ 2,999,376
Less estimated income	<u>961,113</u>
Total general fund appropriation	\$ 2,038,263

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

SECTION 3. APPROPRIATION. The line item entitled "Grants, benefits, and claims" in section 1 of this Act includes \$1,025,000 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 1986.

SECTION 4. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 15, 1985

CHAPTER 11

HOUSE BILL NO. 1012
(Committee on Appropriations)

SOLDIERS' HOME AND VETERANS' AFFAIRS

AN ACT making an appropriation for defraying the expenses of the soldiers' home and the department of veterans' affairs of the state of North Dakota; and providing for a transfer of earnings from the veterans' postwar trust fund and the sinking fund for the state of North Dakota general obligation bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 soldiers' home and the department of veterans' affairs of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

SOLDIERS' HOME

Salaries and wages	\$ 1,545,207
Operating expenses	586,337
Data processing	14,428
Equipment	41,363
Capital improvements	126,636
Total special funds appropriation	\$ 2,313,971

Subdivision 2.

VETERANS' AFFAIRS

Salaries and wages	\$ 298,350
Operating expenses	58,730
Equipment	900
Total appropriation from veterans' postwar trust fund	\$ 357,980

Grand total special funds appropriated H.B. 1012	\$ 2,671,951
Grand total all funds appropriated H.B. 1012	\$ 2,671,951

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION - TRANSFER. The amount appropriated in section 1 of this Act includes \$252,704 which is hereby appropriated and shall be transferred to the soldiers' home operating fund from the veterans' postwar trust fund pursuant to section 37-14-14 for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 4. APPROPRIATION - TRANSFER. The amount appropriated in section 1 of this Act includes \$1,055,657 which is hereby appropriated and shall be transferred to the soldiers' home operating fund from the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 15, 1985

CHAPTER 12

HOUSE BILL NO. 1013
(Committee on Appropriations)

MISCELLANEOUS FUNDS AND ORGANIZATIONS

AN ACT making an appropriation for defraying expenses of various commissions, departments, and divisions thereof of the state of North Dakota; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 income to the various stated commissions, departments, and divisions of the state of North Dakota for defraying the expenses for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

ARREST AND RETURN OF FUGITIVES

Operating expenses	\$ 36,000
Total general fund appropriation	\$ 36,000

Subdivision 2.

BOYS AND GIRLS CLUBWORK

Grants, benefits, and claims	\$ 53,000
Total general fund appropriation	\$ 53,000

Subdivision 3.

CAPITOL GROUNDS PLANNING COMMISSION

Operating expenses	\$ 10,000
Total capitol building fund appropriation	\$ 10,000

Subdivision 4.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Operating expenses	\$ 2,500
Total general fund appropriation	\$ 2,500

Subdivision 5.

FIREMEN'S ASSOCIATION

Grants, benefits, and claims	\$ 49,500
Total general fund appropriation	<u>\$ 49,500</u>

Subdivision 6.

MISCELLANEOUS REFUNDS

Grants, benefits, and claims	\$ 410,000
Total general fund appropriation	<u>\$ 410,000</u>

Subdivision 7.

NURSES' SCHOLARSHIPS

Operating expenses	\$ 4,050
Grants, benefits, and claims	<u>70,000</u>
Total all funds	\$ 74,050
Less estimated income	<u>44,050</u>
Total general fund appropriation	\$ 30,000

Subdivision 8.

THEODORE ROOSEVELT ROUHRIDER AWARD

Grants, benefits, and claims	\$ 5,000
Total general fund appropriation	<u>\$ 5,000</u>

Subdivision 9.

COUNCIL OF STATE GOVERNMENTS

Operating expenses	\$ 64,600
Total general fund appropriation	<u>\$ 64,600</u>

Subdivision 10.

COMMISSION ON UNIFORM STATE LAWS

Operating expenses	\$ 25,000
Total general fund appropriation	<u>\$ 25,000</u>

Subdivision 11.

CENTENNIAL COMMISSION

Operating expenses	\$ 140,000
Total general fund appropriation	<u>\$ 140,000</u>

Subdivision 12.

EDUCATION COMMISSION OF THE STATES

Operating expenses	\$ 40,000
Total general fund appropriation	<u>\$ 40,000</u>

Subdivision 13.

MIDWEST TECHNOLOGY DEVELOPMENT INSTITUTE

Operating expenses	\$ 100,000
Total general fund appropriation	<u>\$ 100,000</u>
Grand total general fund appropriation H.B. 1013	\$ 955,600
Grand total special funds appropriation H.B. 1013	\$ 54,050
Grand total all funds appropriation H.B. 1013	<u>\$1,009,650</u>

SECTION 2. EXEMPTION. The funds herein appropriated for subdivisions 1, 3, 4, and 9 of this Act shall not be subject to the provisions of sections 54-27-10 and 54-27-11 of the North Dakota Century Code, relating to the time during which appropriations become available.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. APPROPRIATION. There is hereby appropriated in addition to the appropriation provided in subdivision 7 of section 1 of this Act for nurses' scholarships, all funds as may be on deposit in the nurses' scholarship loan fund as provided for in section 43-12-35 for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 5. EMERGENCY. Subdivisions 6 and 11 of section 1 of this Act are hereby declared to be an emergency measure and are in effect from and after the passage and approval of this Act.

Approved April 16, 1985

CHAPTER 13

HOUSE BILL NO. 1014
(Committee on Appropriations)

UNEMPLOYMENT INSURANCE

AN ACT making an appropriation for defraying the expenses of unemployment insurance for the various departments and institutions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 office of management and budget for the purpose of administration and making payments for unemployment insurance claims, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Grants, benefits, and claims	\$ 1,500,000
Total special funds appropriation	\$ 1,500,000

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. INTENT. It is the intent of the legislative assembly that the office of management and budget may use the funds appropriated in section 1 of this Act to administer the unemployment claims process and promote efficient administration of claims.

Approved March 22, 1985

CHAPTER 14

HOUSE BILL NO. 1015
(Committee on Appropriations)

PARDON BOARD AND PAROLE AND PROBATION OFFICE

AN ACT making an appropriation for defraying the expenses of the pardon board and the parole and probation office of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 pardon board and the parole and probation office of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

PARDON BOARD

Operating expenses	\$	1,780
Total general fund appropriation	\$	1,780

Subdivision 2.

PAROLE AND PROBATION OFFICE

Salaries and wages	\$	1,592,593
Operating expenses		214,600
Data processing		10,397
Equipment		34,457
Total general fund appropriation	\$	1,852,047
Grand total general fund appropriation H.B. 1015	\$	1,853,827

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

Approved April 15, 1985

CHAPTER 15

HOUSE BILL NO. 1016
 (Committee on Appropriations)

ADJUTANT GENERAL

AN ACT making an appropriation for defraying the expenses of the adjutant general of the state of North Dakota; and providing for an appropriation and transfer of funds from the Vietnam bonus sinking fund and national guard tuition trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 946,398
Operating expenses	1,428,953
Equipment	24,000
Inauguration	3,600
Recruiting and retention	124,136
Army guard service contract	1,400,000
Training site contract	1,000,000
Tuition fees	850,000
Air guard contract	<u>2,406,745</u>
Total all funds	\$ 8,183,832
Less estimated income	<u>5,800,881</u>
Total general fund appropriation	\$ 2,382,951

SECTION 2. APPROPRIATION - TRANSFER. The amount of \$124,136, or so much thereof as is necessary, for the line item entitled Recruiting and retention and included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred to the adjutant general from the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 3. APPROPRIATION - TRANSFER. The amount of \$818,050, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred to the adjutant general from the sinking fund for the state of North Dakota general obligation bonds, Vietnam conflict adjusted compensation series for the purpose of matching federal funds for the army and air guard service contracts for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 4. APPROPRIATION - TRANSFER. The amount of \$850,000, or so much thereof as is necessary, for the line item entitled Tuition fees and included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred from the accumulated earnings of the national guard tuition trust fund to the adjutant general for the tuition programs provided for in North Dakota Century Code chapters 37-07.1 and 37-07.2 for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 5. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 16

HOUSE BILL NO. 1017
 (Committee on Appropriations)

CIVIL AIR PATROL

AN ACT making an appropriation for defraying the expenses of the civil air patrol of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 civil air patrol of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 31,726
Operating expenses	72,504
Equipment	<u>6,800</u>
Total general fund appropriation	\$ 111,030

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 17

HOUSE BILL NO. 1018
(Committee on Appropriations)

INSURANCE PREMIUM TAX DISTRIBUTION

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

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

SECTION 1. 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 \$5,200,000, 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, 1985, and ending June 30, 1987.

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 11, 1985

CHAPTER 18

HOUSE BILL NO. 1019
 (Committee on Appropriations)

STATE HISTORICAL BOARD

AN ACT making an appropriation for defraying the expenses of the state historical board of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 historical board of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

STATE HISTORICAL BOARD

Salaries and wages	\$ 2,510,366
Operating expenses	836,682
Data processing	16,000
Equipment	85,550
Capital improvements	184,000
Grants, benefits, and claims	500,000
Total all funds	<u>\$ 4,132,598</u>
Less estimated income	787,968
Total general fund appropriation	<u>\$ 3,344,630</u>

Subdivision 2.

INTERNATIONAL PEACE GARDEN

Grants, benefits, and claims	\$ 397,000
Total general fund appropriation	<u>\$ 397,000</u>
Grand total general funds appropriated -	\$ 3,741,630
H.B. 1019	
Grand total special funds appropriated -	\$ 787,968
H.B. 1019	
Grand total all funds H.B. 1019	\$ 4,529,598

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby

repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 4. APPROPRIATION. The superintendent of the North Dakota state historical board shall be authorized to offer up to \$50,000 of the operating expenses line item appropriated in section 1 of this Act to the North Dakota humanities council, inc., in expectation of return of the appropriation and matching funds from the national endowment for the humanities. Any such funds that may be received by the superintendent are hereby appropriated, subject to emergency commission approval, to the state historical board for the development of exhibits at the heritage center.

Approved April 15, 1985

CHAPTER 19

HOUSE BILL NO. 1020
(Committee on Appropriations)

ECONOMIC DEVELOPMENT COMMISSION

AN ACT making an appropriation for defraying the expenses of the economic development commission of the state of North Dakota; and providing for a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 economic development commission of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 1,043,939
Operating expenses	1,355,067
Equipment	400,461
Horizons magazine	60,000
Data processing	8,500
Total all funds	\$ 2,867,967
Less estimated income	1,458,228
Total general fund appropriation	\$ 1,409,739

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. TRANSFER. The amount of \$1,354,748 included in the estimated income line item in section 1 shall be transferred from the state highway fund to the economic development commission operating fund as directed by the office of management and budget during the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the legislative assembly that \$30,000 of operating expenses appropriated in section 1 of this Act be used by the economic development commission for the purpose of attracting a federal aviation administration management training program and facility to the university of North Dakota.

Approved April 15, 1985

CHAPTER 20

HOUSE BILL NO. 1021
(Committee on Appropriations)

STATE WATER COMMISSION

AN ACT making an appropriation for defraying the expenses of the state water commission of the state of North Dakota; and providing for an appropriation and transfer of funds from the resources trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 water commission of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 4,536,690
Operating expenses	979,029
Data processing	181,400
Equipment	351,850
Contracts	<u>3,664,358</u>
Total all funds	\$ 9,713,327
Less estimated income	<u>2,331,501</u>
Total general fund appropriation	\$ 7,381,826

SECTION 2. APPROPRIATION - TRANSFER. The amount appropriated in section 1 of this Act to the state water commission for the line item entitled Contracts includes \$2,000,000 which shall be transferred to the state water commission contract fund from the resources trust fund created by subsection 1 of section 57-51.1-07 as directed by the office of management and budget during the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 3. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after

certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 4. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 5. SOURIS RIVER FLOOD CONTROL PROJECT - BUDGET SECTION APPROVAL. The amount appropriated in section 1 of this Act to the state water commission for the line item entitled Contracts includes \$905,000 for the Souris River flood control project. If the full amount of \$905,000 is not needed to complete the project, or if the full amount will not be expended during the 1985-87 biennium due to reasons such as the delay of the project, the remainder of the unexpended amount may be utilized by the state water commission for other contract purposes, subject to approval of the budget section of the legislative council.

Approved April 15, 1985

CHAPTER 21

HOUSE BILL NO. 1022
(Committee on Appropriations)

PARKS AND RECREATION DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the parks and recreation department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 parks and recreation department of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 2,654,145
Operating expenses	1,568,649
Data processing	200
Equipment	336,980
Capital improvements	552,281
Grants, benefits, and claims	3,833,111
Total all funds	\$ 8,945,366
Less estimated income	4,444,359
Total general fund transfer and appropriation	\$ 4,501,007

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. CAPITAL IMPROVEMENTS AND GRANTS, BENEFITS, AND CLAIMS. It is intended that the appropriation for capital improvements in section 1 of this Act be expended at the discretion of the parks and recreation department and that the appropriation

for grants, benefits, and claims in section 1 of this Act be expended at the discretion of the parks and recreation department and the state outdoor recreation interagency council.

SECTION 4. ADDITIONAL INCOME. All income in excess of estimated income in the budget appropriated by the legislative assembly to the parks and recreation department must be deposited in its operating fund in the state treasury and can be expended only by authorization of the emergency commission.

SECTION 5. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 15, 1985

CHAPTER 22

HOUSE BILL NO. 1023
(Committee on Appropriations)

BONDING FUND AND FIRE AND TORNADO FUND

AN ACT making an appropriation for defraying the expenses of the bonding fund and the fire and tornado fund of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 the bonding fund and the fire and tornado fund under the supervision of the commissioner of insurance of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

		BONDING FUND	
Salaries and wages		\$	44,819
Operating expenses			20,096
Data processing			<u>1,077</u>
Total appropriation from state bonding fund		\$	65,992

Subdivision 2.

		FIRE AND TORNADO FUND	
Salaries and wages		\$	132,837
Operating expenses			77,350
Data processing			10,168
Equipment			105
Contingency			<u>10,000</u>
Total appropriation from state fire and tornado fund		\$	230,460
Grand total special funds appropriation H.B. 1023		\$	296,452

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

Approved April 15, 1985

CHAPTER 23

HOUSE BILL NO. 1024
(Committee on Appropriations)

UNSATISFIED JUDGMENT FUND

AN ACT making an appropriation for defraying the administrative expenses of the unsatisfied judgment fund of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 unsatisfied judgment fund in the state treasury, not otherwise appropriated, to the unsatisfied judgment fund, which is under the supervision of the commissioner of insurance, for the purpose of defraying the administrative expenses of the fund, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 44,025
Operating expenses	5,310
Equipment	125
Total appropriation from unsatisfied judgment fund	\$ 49,460

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 24

HOUSE BILL NO. 1025
(Committee on Appropriations)

AGRICULTURAL COUNCILS AND COMMISSIONS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 various agricultural councils and commissions of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

	EDIBLE BEAN COUNCIL	
Operating expenses		\$ 400,000
Total appropriation from edible bean fund		\$ 400,000

Subdivision 2.

	SUNFLOWER COUNCIL	
Salaries and wages		\$ 38,480
Operating expenses		1,437,496
Equipment		7,000
Total appropriation from sunflower fund		\$ 1,482,976

Subdivision 3.

	HONEY PROMOTION FUND	
Operating expenses		\$ 32,500
Total appropriation from honey promotion fund		\$ 32,500

Subdivision 4.

	STATE POTATO COUNCIL	
Operating expenses		\$ 762,900
Total appropriation from spud fund		\$ 762,900

Subdivision 5.

TURKEY FUND

Operating expenses	\$ 30,400
Total appropriation from turkey promotion fund	<u>\$ 30,400</u>

Subdivision 6.

STATE WHEAT COMMISSION

Salaries and wages	\$ 513,907
Operating expenses	2,311,389
Data processing	6,483
Equipment	8,000
Contingency	<u>20,000</u>
Total appropriation from wheat promotion fund	<u>\$ 2,859,779</u>

Subdivision 7.

STATE BARLEY COUNCIL

Salaries and wages	\$ 237,726
Operating expenses	541,873
Equipment	35,000
Grants, benefits, and claims	<u>100,000</u>
Total appropriation from barley council fund	<u>\$ 914,599</u>

Subdivision 8.

AGRICULTURAL PRODUCTS UTILIZATION COMMISSION

Salaries and wages	\$ 111,311
Operating expenses	70,900
Data processing	6,460
Equipment	7,636
Grants, benefits, and claims	<u>326,930</u>
Total appropriation from agriculturally derived fuel tax fund	<u>\$ 523,237</u>
Grand total special funds appropriated H.B. 1025	\$ 7,006,391
Grand total all funds appropriated H.B. 1025	\$ 7,006,391

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

SECTION 3. APPROPRIATION. There is hereby appropriated 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 for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 15, 1985

CHAPTER 25

HOUSE BILL NO. 1026
(Committee on Appropriations)

STATE REVENUE SHARING

AN ACT making an appropriation for the distribution of state general fund revenue to local political subdivisions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 treasurer of the state of North Dakota for the purpose of distributing general fund revenue to local political subdivisions, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Grants, benefits, and claims	<u>\$ 30,186,541</u>
Total general fund appropriation	<u>\$ 30,186,541</u>

SECTION 2. DISTRIBUTION. The distribution of funds appropriated under section 1 of this Act shall be made in accordance with the formula for state revenue sharing payments as provided for in sections 54-27-20.1 and 54-27-20.2.

Approved March 31, 1985

CHAPTER 26

HOUSE BILL NO. 1027
 (Committee on Appropriations)

JUDICIAL BRANCH

AN ACT making an appropriation for defraying the expenses of the judicial branch of the government of the state of North Dakota; and 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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 of government of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages		\$ 3,360,338
Operating expenses		842,600
Data processing		75,000
Equipment		125,800
Judges retirement		185,072
Total all funds		<u>\$ 4,588,810</u>
Less federal funds		20,000
Total general fund appropriation		<u>\$ 4,568,810</u>

Subdivision 2.

DISTRICT COURTS

Salaries and wages		\$10,468,372
Operating expenses		4,151,269
Data processing		13,921
Equipment		156,201
Judges retirement		703,053
Total general fund appropriation		<u>\$15,492,816</u>

Subdivision 3.

JUDICIAL QUALIFICATIONS COMMISSION
AND DISCIPLINARY BOARD

Salaries and wages	\$	140,699
Operating expenses		111,304
Equipment		1,402
Total all funds	\$	253,405
Less other funds		70,000
Total general fund appropriation	\$	183,405
Grand total general fund appropriation H.B. 1027	\$20,245,031	
Grand total special funds appropriation H.B. 1027	\$	90,000
Grand total all funds appropriation H.B. 1027	\$20,335,031	

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

27-02-02. Salaries of judges of supreme court. Each judge of the supreme court shall receive an annual salary commencing July 1, ~~1983~~ 1985, of ~~fifty-three thousand nine hundred~~ fifty-six thousand eight hundred sixty-five dollars except that the chief justice of the supreme court shall receive an additional one thousand five hundred ~~eighty-two~~ eighty-two dollars per annum and commencing on July 1, 1986, each judge of the supreme court shall receive an annual salary of ~~fifty-nine thousand one hundred forty~~ fifty-nine thousand one hundred forty dollars except that the chief justice of the supreme court shall receive an additional one thousand six hundred forty-five dollars per annum.

SECTION 4. AMENDMENT. Section 27-05-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-03. Salaries and expenses of district judges. Each district judge of this state shall receive an annual salary commencing July 1, ~~1983~~ 1985, of ~~fifty thousand six hundred~~ fifty-three thousand three hundred eighty-three dollars and commencing July 1, 1986, an annual salary of ~~fifty-five thousand five hundred nineteen~~ fifty-five thousand five hundred nineteen dollars and his actual travel expenses, which shall include mileage and subsistence while engaged in the discharge of his official duties outside the county in which his 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 receive an additional one thousand two hundred ~~sixty-six~~ sixty-six dollars per annum commencing July 1, 1985, and one thousand three hundred ~~sixteen~~ sixteen dollars per annum commencing July 1, 1986.

Approved April 15, 1985

CHAPTER 27

HOUSE BILL NO. 1028
 (Committee on Appropriations)

GAME AND FISH DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the game and fish department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 game and fish department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 6,090,316
Operating expenses	3,364,953
Data processing	350,700
Equipment	940,012
Capital improvements	1,805,000
Grants, benefits, and claims	1,127,300
Noxious weed control	89,100
In lieu of taxes	350,000
Total appropriation from game and fish fund	\$ 14,117,381

SECTION 2. HABITAT RESTORATION - APPROPRIATION. There is hereby appropriated the sum of \$500,000, or such lesser amounts as may be available, from the habitat restoration fund from the collection of the habitat restoration stamp fee, to the game and fish department to lease privately owned lands for wildlife habitat to reestablish wildlife population for the biennium beginning July 1, 1985, and ending June 30, 1987. These funds shall be spent only for purposes and utilizing guidelines as outlined in section 20.1-03-12.1.

SECTION 3. PRIVATE HABITAT AND DEER DEPREDATION - APPROPRIATION. There is hereby appropriated the sum of \$1,000,000, or such lesser amount available from the private land habitat

improvement fund, to the game and fish department, to improve wildlife habitat on private land and to alleviate depredation as provided in section 20.1-02-05 for the biennium beginning July 1, 1985, and ending June 30, 1987.

Total special funds appropriation H.B. 1028 \$ 15,617,381

SECTION 4. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 5. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 15, 1985

CHAPTER 28

HOUSE BILL NO. 1029
 (Committee on Appropriations)

ENERGY DEVELOPMENT IMPACT OFFICE

AN ACT making an appropriation for defraying the expenses of the energy development impact office of the state of North Dakota, and providing for a transfer of funds from the lands and minerals trust fund and the coal development impact fund; and to provide for an appropriation - transfer from the coal development impact fund to the general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 coal development impact fund and the lands and minerals trust fund, not otherwise appropriated, to the energy development impact office of the state of North Dakota, for the purpose of defraying the expenses of that office, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 227,634
Operating expenses	41,693
Data processing	2,698
Equipment	2,274
Grants	<u>13,000,000</u>
Total special funds appropriation	<u>\$ 13,274,299</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. GRANTS. Section 54-44.1-11 of the North Dakota Century Code shall not apply to appropriations made for grants in section 1 of this Act nor to the grants line item in chapter 78 of the 1983 Session Laws.

SECTION 4. TRANSFER. There is hereby transferred to the energy development impact office the sum of \$13,274,299, or so much thereof as may be necessary, including \$4,137,149 from the lands and minerals trust fund and \$9,137,150 from the coal development impact fund, for the purpose of defraying the expenses of the energy development impact office. Transfers from these funds shall be made by the office of management and budget only at such times as the moneys are required for disbursement by the energy development impact office.

SECTION 5. APPROPRIATION - TRANSFER TO GENERAL FUND. There is hereby appropriated \$9,415,651 from the coal development impact fund to the general fund in the state treasury for the biennium beginning July 1, 1985, and ending June 30, 1987. The office of management and budget shall make such transfers as necessary after sufficient collections have been received by the coal development impact fund for other appropriations made from the fund.

Approved April 15, 1985

CHAPTER 29

HOUSE BILL NO. 1031
 (Committee on Appropriations)

STATE PENITENTIARY

AN ACT making an appropriation for defraying the expenses of the state penitentiary and various divisions thereof of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 penitentiary and roughrider industries under the supervision of the director of institutions of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

STATE PENITENTIARY		
Salaries and wages		\$ 7,736,528
Operating expenses		3,932,090
Equipment		136,660
Capital improvements		770,200
Total all funds		<u>\$ 12,575,478</u>
Less estimated income		316,158
Total general fund appropriation		<u>\$ 12,259,320</u>

Subdivision 2.

ROUGH RIDER INDUSTRIES		
Salaries and wages		\$ 1,034,537
Operating expenses		4,249,762
Equipment		292,000
Capital improvements		500,000
Total special fund appropriation		<u>\$ 6,076,299</u>
Grand total general fund appropriation H.B. 1031		\$ 12,334,320
Grand total special funds appropriation H.B. 1031		\$ 6,667,457

Grand total all funds appropriation H.B. 1031 \$ 19,001,777

SECTION 2. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. LEGISLATIVE INTENT - AUTHORIZATION. It is the intent of the legislative assembly that if the North Dakota state penitentiary annual rodeo fails to generate sufficient revenue to meet rodeo expenses due to unforeseen circumstances, the state penitentiary is authorized to use funds in its operating expenses line item to meet any such deficit.

SECTION 4. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to roughrider industries, \$75,000, or so much thereof as may be necessary, for the purpose of paying expenses associated with the assumption of responsibility for the warehousing and distribution of food commodities. There is also hereby appropriated the sum of \$275,000, or so much thereof as may be necessary, from the proceeds of a loan, to roughrider industries, for the purpose of paying expenses associated with the assumption of responsibility for the warehousing and distribution of food commodities.

Approved April 16, 1985

CHAPTER 30

HOUSE BILL NO. 1032
(Committee on Appropriations)

EMERGENCY COMMISSION

AN ACT making an appropriation for defraying the unforeseen expenses of the various agencies and institutions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 emergency commission for the purpose of defraying the unforeseen expenses of the various agencies and institutions of the state of North Dakota, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

State contingencies	\$ 750,000
Total general fund appropriation	\$ 750,000

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. DISASTER EXPENSES. The funds appropriated in section 1 of this Act shall also be available to defray the costs of state agencies and institutions which arise as a result of natural disasters and to match federal disaster relief funds.

Approved March 29, 1985

CHAPTER 31

HOUSE BILL NO. 1033
(Committee on Appropriations)

RADIO COMMUNICATIONS DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the radio communications department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 radio communications department under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 1,491,024
Operating expenses	295,881
Data processing	291,891
Equipment	<u>32,899</u>
Total all funds	\$ 2,111,695
Less estimated income	<u>100,000</u>
Total general fund appropriation	\$ 2,011,695

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 32

HOUSE BILL NO. 1034
 (Committee on Appropriations)

DISASTER EMERGENCY SERVICES

AN ACT making an appropriation for defraying the expenses of the division of disaster emergency services of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 disaster emergency services under the supervision of the adjutant general of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$1,106,054
Operating expenses	457,525
Equipment	<u>36,620</u>
Total all funds	\$1,600,199
Less estimated income	<u>1,229,760</u>
Total general fund appropriation	\$ 370,439

SECTION 2. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. INTENT. It is the intent of the legislative assembly that additional federal funds as may become available may be accepted and expended by disaster emergency services upon authorization of the emergency commission.

Approved April 15, 1985

CHAPTER 33

HOUSE BILL NO. 1035
(Committee on Appropriations)

SOUTHWEST WATER PIPELINE PROJECT

AN ACT to create and enact a new section to chapter 48-02 of the North Dakota Century Code, relating to the award of pipeline, labor, and service contracts for the southwest water pipeline project; and to make an appropriation for defraying the expenses of the southwest water pipeline project of the state of North Dakota.

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

SECTION 1. A new section to chapter 48-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Preference for resident pipeline manufacturers and bidders for labor and services. Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section shall not apply to architect, engineer, professional right of way, and land surveying services.

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 \$500,000, or so much thereof as may be necessary, to the state water commission for expenses of the

southwest water pipeline project for the biennium beginning July 1, 1985, and ending June 30, 1987. These funds are appropriated to initiate construction of the southwest water pipeline as authorized by the forty-eighth legislative assembly.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$18,000,000, or so much thereof as may be necessary, to the state water commission for expenses of the southwest water pipeline project for the biennium beginning July 1, 1985, and ending June 30, 1987. These funds are appropriated to initiate construction of the southwest water pipeline, as authorized by the forty-eighth legislative assembly.

SECTION 4. APPROPRIATION - TRANSFER. There is hereby appropriated out of any moneys in the land and minerals trust fund in the state treasury, not otherwise appropriated, the sum of \$1,500,000, or so much thereof as may be necessary, to the state water commission for purposes of the southwest water pipeline for the biennium beginning July 1, 1985, and ending June 30, 1987. These funds are appropriated to initiate construction of the southwest water pipeline, as authorized by the forty-eighth legislative assembly. These funds shall be transferred to the state water commission at the direction of the office of management and budget during the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 5. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 6. Engineering - Architecture. The state shall select engineering expertise from private engineering or architectural firms on the basis of qualifications and so that at least seventy-five percent of the fees expended for the construction phase engineering services are paid to qualified engineering or architectural firms that have maintained their permanent office or main office in this state for at least two continuous years. For fees paid to firms maintaining offices both within this state and in other states, only the portion of the fees paid for services performed by persons who are residents of this state shall be considered in satisfying the above percentage.

Approved April 15, 1985

CHAPTER 34

HOUSE BILL NO. 1036
(Committee on Appropriations)

STATE SEED DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the state seed department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 state seed department of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 1,752,548
Operating expenses	586,722
Equipment	27,734
Capital improvements	87,570
Contingency	85,798
Total appropriation from seed department fund	\$ 2,540,372

SECTION 2. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 35

HOUSE BILL NO. 1037
(Committee on Appropriations)

PREDATORY ANIMAL CONTROL

AN ACT making an appropriation for defraying the expenses of the predatory animal control of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 predatory animal control of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 430,547
Operating expenses	<u>274,433</u>
Total general fund appropriation	\$ 704,980

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

Approved April 15, 1985

CHAPTER 36

HOUSE BILL NO. 1038
(Committee on Appropriations)

TEACHER CENTER NETWORK

AN ACT making an appropriation to the superintendent of public instruction for the general support of the North Dakota teacher center network.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 \$350,000, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of providing general fund support to the North Dakota teacher center network for the biennium beginning July 1, 1985, and ending June 30, 1987. The superintendent of public instruction shall act as fiscal agent for the North Dakota teacher center network. Decisions regarding expenditures shall be the exclusive responsibility of the teacher center policy board.

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved March 31, 1985

CHAPTER 37

HOUSE BILL NO. 1040
(Committee on Appropriations)

BANK OF NORTH DAKOTA PROFITS TRANSFER

AN ACT to transfer moneys from the accumulated and undivided profits of the Bank of North Dakota to the general fund of the state of North Dakota.

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

SECTION 1. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$7,000,000 from the accumulated and undivided profits of the Bank of North Dakota. Such moneys shall be transferred during the biennium beginning July 1, 1985, and ending June 30, 1987, upon order of the industrial commission, with one half of the transfer to be made no later than June 30, 1986.

Approved March 22, 1985

CHAPTER 38

HOUSE BILL NO. 1219
(Strinden)

ADDITIONAL COMPENSATION FOR CERTAIN STATE EMPLOYEES

AN ACT to provide an appropriation for additional compensation to North Dakota state employees, excluding faculty and senior administrative staff at the institutions and agencies under the control of the state board of higher education, for the period beginning January 1, 1985, and ending June 30, 1985; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 other income in the state treasury as indicated to the agencies and institutions of state government named herein for the purpose of providing additional compensation to employees of the various agencies and institutions named herein for the period beginning January 1, 1985, and ending June 30, 1985:

AGENCY OR INSTITUTION	GENERAL FUND	SPECIAL FUNDS	TOTAL
State treasurer	\$ 4,210	\$	\$ 4,210
Tax commissioner	11,069		11,069
Director of institutions	5,437		5,437
Supreme court	14,219		14,219
District courts	24,744		24,744
Superintendent of public instruction	48,206		48,206
Division of independent study	13,689		13,689
Bismarck junior college	45,422		45,422
Lake Region community college	28,259		28,259
UND-Williston Center	15,936		15,936
University of North Dakota Medical center	556,455	98,154	654,609
rehabilitation hospital		137,311	137,311
University of North Dakota	102,605	43,973	146,578

medical center			
North Dakota state	431,324		431,324
university			
North Dakota state	1,685		1,685
university - state			
toxicologist			
Upper great plains	842		842
transportation institute			
State school of science	64,041	75,000	139,041
Dickinson state college		45,817	45,817
Mayville state college	33,145		33,145
Minot state college		102,731	102,731
Valley City state college	46,093		46,093
North Dakota forest	5,745		5,745
service			
North Dakota state	12,332	9,042	21,374
university - Bottineau			
branch			
Teachers' fund for		795	795
retirement			
Grafton state school	63,735		63,735
San Haven	18,471		18,471
Veterans' home		6,482	6,482
Department of veterans'		1,673	1,673
affairs (postwar			
veterans' trust fund)			
Department of human	50,457	6,880	57,337
services			
Aeronautics commission		125	125
State laboratories	6,347		6,347
department			
Housing finance agency		1,213	1,213
Job service		104,497	104,497
Workmen's compensation		12,728	12,728
bureau			
Highway patrol	42,133		42,133
Civil air patrol	836		836
State penitentiary	1,394		1,394
Economic development	4,391	1,882	6,273
commission			
Commissioner of	1,744	152	1,896
agriculture			
Extension division	38,750		38,750
Northern crops institute	842		842
Main experiment station	55,572	75,000	130,572
Dickinson experiment	6,739		6,739
station			
Central grasslands	1,685		1,685
experiment station			
Hettinger experiment	2,527		2,527
station			
Langdon experiment station	2,527		2,527
North central experiment	2,527		2,527
station			

Williston experiment station	3,370		3,370
Carrington experiment station		4,212	4,212
Agronomy seed farm		1,685	1,685
Land reclamation research center		17,690	17,690
Geological survey		18,401	18,401
Parks and recreation department	4,422		4,422
Total	<u>\$ 1,773,927</u>	<u>\$ 765,443</u>	<u>\$ 2,539,370</u>

SECTION 2. LEGISLATIVE INTENT. The amounts appropriated or authorized for expenditure in this Act are subject to the following provisions:

1. The amounts are intended to provide a one-time salary payment of \$360 and a \$60 increase in monthly compensation for the six-month period beginning January 1, 1985, and ending June 30, 1985, to eligible employees of all state agencies and institutions excluding faculty and senior administrative staff, but including persons employed by auxiliary enterprises at the institutions and agencies under the control of the state board of higher education.
2. The actual amount of increases paid the individual employees shall be determined by the director of the agency or institution in accordance, where applicable, with central personnel division classification and compensation plans, except that a director of an agency or institution may grant increases that result in an employee's salary level exceeding the maximum limit of the salary range for that employee's pay grade.
3. Compensation increases shall only be granted to employees who are employed by the state on the effective date of this Act and have been continuously employed by the state since July 1, 1984.
4.
 - a. Employees who have received a compensation increase of \$60 or more per month effective April 1, 1984, or later are not eligible for the compensation increases provided herein.
 - b. Employees who have not received any compensation increase effective April 1, 1984, or later are eligible for the full \$60 per month increase and the \$360 one-time salary payment.
 - c. Employees who have received an increase of less than \$60 per month effective April 1, 1984, or later are eligible for a monthly increase only up to the amount of the difference between the monthly increase received and \$60 per month, and are eligible for a

one-time salary payment equal to \$360 less the additional compensation received between July 1, 1984, and December 31, 1984.

5. A compensation increase of up to the amounts provided shall only be granted when it is determined appropriate by the director of the agency or institution that an employee should receive such an increase.
6. The moneys herein appropriated shall be made available to the various agencies and institutions only after a determination by the director of the office of management and budget that such amounts are necessary to pay the amounts of additional compensation in addition to the amounts provided in appropriation acts passed by the forty-eighth legislative assembly.

SECTION 3. AUTHORIZATION. In addition to the amounts appropriated to the agencies and institutions in section 1 of this Act, the agencies and institutions listed below are authorized to provide the amounts shown for compensation increases authorized by this Act, pursuant to and within the limits of the agencies' and institutions' 1983-85 salaries and wages line item appropriations.

AGENCY OR INSTITUTION	GENERAL FUND	SPECIAL FUNDS
State printing	\$	\$ 139
Secretary of state	14,219	
Office of management and budget	14,568	
Central data processing		14,205
Attorney general	3,666	
Energy development impact office	348	349
Motor vehicle registrar		22,876
Public employees retirement board		5,855
Board of higher education	2,788	
Industrial school	3,415	
Commissioner of university and school lands		3,415
Library commission	3,680	
School for the deaf	7,221	
Board of vocational education	1,405	1,522
Department of health	16,927	15,624
State hospital	73,591	
Indian affairs commission	1,673	
Labor commissioner	2,509	
Public service commission	5,249	1,749
Department of banking and financial institutions	1,673	
Securities commissioner	934	
State laboratories department	5,000	
Bank of North Dakota		4,647
Parole and probation office	7,124	
Highway patrol	40,297	
Radio communications department	293	

Division of disaster emergency services	837	1,533
Penitentiary industries		836
Adjutant general	4,489	
Milk stabilization board		948
Sunflower council		836
Livestock sanitary board	84	
Seed department		3,750
Historical society	10,804	
Parks and recreation department	4,500	
Game and fish department		1,533
Water commission	15,251	
Highway department		150,487
Total	<u>\$242,545</u>	<u>\$230,304</u>

SECTION 4. LEGISLATIVE INTENT. Any agency or institution not included in this Act or that has been appropriated or authorized an insufficient amount in sections 1 and 3 of this Act to provide compensation increases to all eligible employees is authorized to provide such increases within the limits of the agencies' and institutions' 1983-85 salaries and wages line item appropriations.

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

Approved February 18, 1985

CHAPTER 39

HOUSE BILL NO. 1349
(Representatives Wold, Laughlin)
(Senators Walsh, Naaden)

STATE REVENUE SHARING DEFICIENCY

AN ACT making an appropriation to the state treasurer for state revenue sharing payments; and declaring an emergency.

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

SECTION 1. APPROPRIATION. It is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,518,860.34, or so much thereof as may be necessary, to the state treasurer for state revenue sharing payments, for the period beginning January 1, 1985, and ending June 30, 1985.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect upon its passage and approval.

Approved March 31, 1985

CHAPTER 40

HOUSE BILL NO. 1388
(Representative R. Anderson)
(Senators Bakewell, D. Meyer)

RANGELAND GRASSHOPPER CONTROL

AN ACT to provide an appropriation to the commissioner of agriculture for rangeland grasshopper control.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 \$100,000, or so much thereof as may be necessary, to the commissioner of agriculture for rangeland grasshopper control for the biennium beginning July 1, 1985, and ending June 30, 1987. The state entomologist, under the direction of the commissioner of agriculture, upon approving control plans, is authorized to provide funding for control costs for cooperative rangeland control programs conducted by the United States department of agriculture's animal and plant health inspection service in cooperation with the state and private landowners. The state's share under this Act may not exceed fifty percent of the costs on private or state-owned lands, which are not reimbursed or paid by the federal government. If control costs exceed the amount of funds available, additional funds may be provided by the state emergency commission from moneys in the state contingency fund. Funds must be paid directly to the animal and plant health inspection service upon receipt of a bill for the state's share of the control costs.

Approved March 29, 1985

CHAPTER 41

HOUSE BILL NO. 1525
(Representatives Nowatzki, Rice, Thompson)
(Senators Streibel, Heigaard, Wenstrom)

EXPERIMENT STATIONS' LAND PURCHASES

AN ACT making an appropriation for defraying the expense of the purchase of certain lands by the Carrington experiment station, the Hettinger experiment station, the Langdon experiment station, and the Williston experiment station.

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

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the operating fund, the land replacement fund, and the undedicated gift fund of the Carrington experiment station, not otherwise appropriated, the sum of \$116,325, or so much thereof as may be necessary, to the Carrington experiment station for the purpose of defraying the expense of purchasing a tract of land not to exceed one hundred forty-one acres located in the southeast quarter of section twenty-five, township one hundred forty-seven north, range sixty-seven west, Foster County, North Dakota.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the operating fund, the land replacement fund, and the undedicated gift fund of the Hettinger experiment station, not otherwise appropriated, the sum of \$273,780, or so much thereof as may be necessary, to the experiment station for the purpose of defraying the expense of purchasing tracts of land not to exceed five hundred twenty-seven acres located in the south half of the southwest quarter of section eleven, the northwest quarter, the west half of the southwest quarter, and the west half of the northeast quarter of section fourteen; the southeast quarter of the southwest quarter; the southwest quarter of the southeast quarter; and the east half of the southeast quarter of section fifteen; and lot 5 and 6 of Clement second subdivision in the west half of the southeast quarter of the northeast quarter of section fourteen; all in township one hundred twenty-nine north, range ninety-six west, in Adams County, North Dakota.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the operating fund, the land replacement fund, and the undedicated gift fund of the Langdon experiment station, not

otherwise appropriated, the sum of \$81,875, or so much thereof as may be necessary, to the Langdon experiment station for the purpose of defraying the expense of purchasing a tract of land not to exceed sixty-five and five-tenths acres located in the north half of the northeast quarter of section twenty-four, township one hundred sixty-one north, range sixty west, Cavalier County, North Dakota.

SECTION 4. APPROPRIATION. There is hereby appropriated out of any moneys in the operating fund, the land replacement fund, and the undedicated gift fund of the Williston experiment station, not otherwise appropriated, the sum of \$66,000, or so much thereof as may be necessary, to the Williston experiment station for the purpose of defraying the expense of purchasing a tract of land not to exceed one hundred sixty acres located in the southeast quarter of section twenty-six, township one hundred fifty-four north, range one hundred two west, Williams County.

Approved March 29, 1985

CHAPTER 42

HOUSE BILL NO. 1526
(Representatives Kelly, Kuchera, Wentz)
(Senators Lips, Stenehjem)

EDUCATIONAL BROADCASTING COUNCIL

AN ACT making an appropriation for defraying the expenses of the educational broadcasting council.

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

SECTION 1. APPROPRIATION. The funds provided in this section, or so much as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the educational broadcasting council of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Operating expenses	\$ 5,000
Grants	<u>225,000</u>
Total general fund appropriation	<u>\$230,000</u>

Approved April 15, 1985

CHAPTER 43

HOUSE BILL NO. 1583
(Representative Kuchera)
(Senator Stenehjem)

UND HOUSING OFFICE BUILDING

AN ACT to provide an appropriation to construct and equip a housing office building at the university of North Dakota.

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

SECTION 1. APPROPRIATION. There is hereby appropriated from special funds derived from federal funds and other income, the sum of \$500,000, or so much thereof as may be necessary, to the state board of higher education for the purpose of constructing and equipping a housing office building at the university of North Dakota, for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved March 31, 1985

CHAPTER 44

HOUSE BILL NO. 1653
 (Unhjem)
 (Approved by the Committee on Delayed Bills)

ADDITIONAL STATE EMPLOYEE COMPENSATION

AN ACT to provide an appropriation for additional compensation to North Dakota state employees; to provide for revisions to the North Dakota central personnel compensation plan; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 herein for the purpose of providing additional compensation to employees of the various agencies and institutions named herein for the period beginning February 1, 1985, and ending June 30, 1985:

AGENCY OR INSTITUTION	GENERAL FUND	SPECIAL FUNDS	TOTAL
State printing	\$	\$ 4,052	\$ 4,052
Secretary of state	5,522		5,522
Office of management and budget	25,656		25,656
Central data processing		39,060	39,060
State auditor	18,491		18,491
State treasurer	2,631		2,631
Attorney general	27,779		27,779
Tax commissioner	45,246		45,246
Energy development impact office (one-half from the coal development impact fund)		1,313	1,313
Director of institutions	18,456		18,456
Motor vehicle registrar		12,203	12,203
Legislative council	12,664		12,664
Supreme court	16,552		16,552
Judicial qualifications	771		771

commission			
District courts	43,945		43,945
Public employees retirement board		3,585	3,585
Superintendent of public instruction	10,291	16,190	26,481
Division of independent study	7,314		7,314
Board of higher education	5,620		5,620
Industrial school	24,339		24,339
Commissioner of university and school lands		5,203	5,203
Bismarck junior college	130,497		130,497
Lake Region community college	39,823		39,823
UND-Williston center	44,541		44,541
University of North Dakota	811,938		811,938
Medical center rehabilitation hospital		144,714	144,714
University of North Dakota medical center	315,349	123,088	438,437
North Dakota state university	714,624		714,624
North Dakota state university-state toxicologist	5,457		5,457
Upper great plains transportation institute	5,042		5,042
State school of science	253,696		253,696
Dickinson state college	105,851		105,851
Mayville state college	73,400		73,400
Minot state college	206,897		206,897
Valley City state college	90,640		90,640
North Dakota forest service	12,964		12,964
North Dakota state university - Bottineau branch	38,033		38,033
Library commission	6,239		6,239
School for the deaf	20,024		20,024
School for the blind	11,887		11,887
Teachers' fund for retirement		2,172	2,172
Board of vocational education	6,192	6,708	12,900
Department of health	42,767	39,474	82,241
Grafton state school	235,477		235,477
San Haven	66,998		66,998
State hospital	210,934		210,934
Veterans' home		8,434	8,434
Indian affairs commission	982		982
Department of veterans' affairs (postwar veterans' trust fund)		1,763	1,763
Department of human services	224,999	30,679	255,678
Governor's council on human resources	1,079		1,079
Protection and advocacy project	4,632		4,632
Insurance commissioner		6,791	6,791
Unsatisfied judgment fund		265	265

Industrial commission		12,653	12,653
Labor commissioner	1,706		1,706
Public service commission	17,210	5,666	22,876
Weather modification board	1,266		1,266
Aeronautics commission	1,730		1,730
Department of banking and financial institutions	8,169		8,169
Securities commissioner	2,679		2,679
State laboratories department	10,609		10,609
Bonding fund		188	188
Fire and tornado fund		808	808
Bank of North Dakota		34,442	34,442
Housing finance agency		7,128	7,128
Mill and elevator association		21,572	21,572
Job service		134,643	134,643
OASIS and social security		1,414	1,414
Workmen's compensation bureau		18,605	18,605
Crime victims reparations division	174		174
Parole and probation office	8,994		8,994
Highway patrol	62,524		62,524
Radio communications department	8,142		8,142
Division of disaster emergency services	1,836	4,721	6,557
Civil air patrol	187		187
State penitentiary	39,848		39,848
Penitentiary industries		5,819	5,819
Adjutant general	4,934		4,934
Economic development commission	4,505	1,931	6,436
Commissioner of agriculture	10,051	1,242	11,293
Predatory animal control	2,750		2,750
Milk stabilization board		1,676	1,676
Sunflower council		236	236
Agricultural products utilization commission		654	654
Livestock sanitary board	1,929		1,929
Wheat commission		2,835	2,835
Barley council		1,422	1,422
Seed department		9,230	9,230
Extension division	224,653	9,675	234,328
Northern crops institute	4,280		4,280
Main experiment station	259,413	20,340	279,753
Dickinson experiment station	5,934		5,934
Central grasslands experiment station	3,040		3,040
Hettinger experiment	3,075		3,075

station			
Langdon experiment station	3,094		3,094
North central experiment station	3,298		3,298
Williston experiment station	3,760		3,760
Carrington experiment station	6,406		6,406
Agronomy seed farm		1,901	1,901
Land reclamation research center		12,198	12,198
Historical society	14,038		14,038
Council on the arts	1,183		1,183
Soil conservation committee	1,780		1,780
Geological survey		9,327	9,327
Game and fish department		35,233	35,233
Parks and recreation department	10,072		10,072
Water commission	26,059		26,059
Southwest water pipeline (resources trust fund)		575	575
Highway department		311,691	311,691
Total	<u>\$4,705,567</u>	<u>\$1,113,519</u>	<u>\$5,819,086</u>

The amounts herein appropriated are intended to provide average compensation increases of 9.5 percent to faculty and senior administrative staff at the institutions of higher education for the period beginning after February 1, 1985, through June 30, 1985, and average compensation increases of 5.5 percent to other state employees for the period beginning after April 1, 1985, through June 30, 1985. It is intended that employees receive minimum increases of fifty dollars per month. The actual amount of increases paid an individual employee shall be determined by the director of the agency or institution in accordance, where applicable, with central personnel division classification and compensation plans, except that a director of an agency or institution may grant increases which exceed the maximum limit of salary ranges in such plans. The salary increases are to be based on merit, performance, or equity adjustments, and are not intended to be across-the-board salary increases. Compensation increases may only be granted to employees who are currently employed by the state on the effective date of this Act and who have been continuously employed by the state since July 1, 1984, excluding those employees who have indicated that they will not or who the administrator knows will not be employed by the agency or institution on July 1, 1985, or at the end of their contract period. Notwithstanding other provisions of this Act, any agency or institution may pay an employee a one time payment for amounts the employee would have received pursuant to the provisions of this Act had it been effective earlier, or an agency may use the funds appropriated by this Act to provide increased salary levels during the biennium ending June 30, 1987.

SECTION 2. Revisions to compensation plan. Notwithstanding the provisions of section 54-44.3-12.1 of the North Dakota Century Code, relating to revisions to the North Dakota central personnel compensation plan, the central personnel division shall revise the compensation plan to reflect a 5.5 percent or \$50 per month increase, whichever is greater, as of April 1, 1985, and to reflect a four percent or \$50 per month increase, whichever is greater, as of July 1, 1986.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 16, 1985

CHAPTER 45

HOUSE BILL NO. 1660
(Strinden)

(Approved by the Committee on Delayed Bills)

PERSONAL PROPERTY TAX REPLACEMENT

AN ACT to amend and reenact section 57-58-01 of the North Dakota Century Code, relating to distribution of personal property tax replacement revenues to counties and local subdivisions; to provide an appropriation for the distribution of funds for the replacement of personal property tax revenue; and to provide an expiration date.

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

SECTION 1. AMENDMENT. Section 57-58-01 of the North Dakota Century Code is hereby amended and reenacted to read 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 June 1, 1980, 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 county, determined to be due such county 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 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, cities, 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, shall be credited to the general fund of the political subdivision. In the years after ~~1971~~ 1985, payments to the counties under this section shall be made based upon ninety-five percent of such payment for 1971 together with a growth factor which shall be based upon the dollar amount of increase or decrease in real property taxes levied within each county. For each ~~seven~~ nineteen 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~~ nineteen 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 June 1, 1980, 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 shall 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 shall 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 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 county 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.

SECTION 2. 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 replacement of personal property taxes, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Grants, benefits, and claims	\$24,069,346
Total general fund appropriation	<u>\$24,069,346</u>

SECTION 3. DISTRIBUTION. The distribution of funds appropriated under section 2 of this Act shall be made in accordance with the formula for personal property tax replacement payments as provided for in section 57-58-01. During the year ending June 30, 1986, payments appropriated under section 2 of this Act shall not exceed one-half of the total appropriation provided for in this Act.

SECTION 4. PRORATION. Notwithstanding the provisions of section 57-58-01, which contains the formula for personal property tax replacement payments, the payments shall not exceed the amounts as set forth in this Act. If the appropriation provided for in this Act in any fiscal year is less than the amount determined by applying the formula as contained in section 57-58-01, the director of the office of management and budget shall pay only the amount of funds available under this Act. Under such circumstances, a method of proration shall be used that provides each eligible recipient the same proportion of these funds as the percent share of total funds it would have received under the application of the formula provided for in section 57-58-01.

SECTION 5. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 1987, and after that date is ineffective.

Approved April 16, 1985

CHAPTER 46

SENATE BILL NO. 2001
(Committee on Appropriations)

LEGISLATIVE BRANCH

AN ACT to appropriate money for the expenses of the legislative branch of government; and declaring an emergency.

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

SECTION 1. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT. There are hereby appropriated out of the general fund of the state treasury, not otherwise appropriated, to the legislative branch of the state government for the purposes specified, such sums as set forth in section 2 of this Act, for the fiscal period beginning with the effective date of this Act and ending June 30, 1987.

SECTION 2. APPROPRIATION.

Subdivision 1.

FORTY-NINTH AND FIFTIETH LEGISLATIVE ASSEMBLIES AND BIENNIUM

Salaries and wages	\$3,360,636
Operating expenses	1,868,407
Equipment	32,640
National Conference of State Legislatures	71,854
Total general fund appropriation	<u>\$5,333,537</u>

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$2,216,900
Operating expenses	1,425,939
Equipment	11,087
Total general fund appropriation	<u>\$3,653,926</u>
Grand total general fund appropriation	\$8,987,463

SECTION 3. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between lines item 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 transfer of funds between the line items for the forty-ninth and fiftieth legislative assemblies, upon request of the chairman of the legislative council or his designee upon a finding by the chairman or his designee that such transfers are required for the legislative assembly to carry on its functions and duties.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect immediately upon its passage and approval.

Approved April 15, 1985

CHAPTER 47

SENATE BILL NO. 2002
(Committee on Appropriations)

BOARD OF HIGHER EDUCATION AND COMMUNITY
AND JUNIOR COLLEGES

AN ACT making an appropriation for defraying the expenses of the state board of higher education, Bismarck junior college, Lake Region community college, university of North Dakota-Williston center and reciprocal agreements of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

STATE BOARD OF HIGHER EDUCATION

Salaries and wages	\$ 870,020
Operating expenses	262,005
Data processing	29,665
Equipment	11,325
National direct student loans	125,245
Private college tuition assistance	500,000
Student financial assistance grants	1,085,000
Community colleges	<u>9,497,257</u>
Total all funds	\$12,380,517
Less federal funds	400,000
Total general fund appropriation	<u>\$11,980,517</u>

Subdivision 2.

RECIPROCAL AGREEMENTS

Reciprocal agreements	\$ 2,360,100
Total general fund appropriation	<u>\$ 2,360,100</u>

Grand total general fund appropriation S.B. 2002	\$ 14,340,617
Grand total special funds appropriation S.B. 2002	\$ 12,621,109
Grand total all funds appropriation S.B. 2002	\$ 26,961,726

SECTION 2. Community and junior colleges. The funds appropriated in the community colleges line item, or so much thereof as may be necessary, are to be allocated and disbursed to the community colleges under the jurisdiction and control of the state board of higher education in such amounts as may be necessary, in the judgment of the board, to meet the needs of the community colleges. The board shall allocate and disburse such moneys to the various line items of the community colleges and said line items shall be increased by the amount of such moneys allocated and disbursed by the board, upon notification of the office of management and budget by the board.

SECTION 3. APPROPRIATION - COMMUNITY AND JUNIOR COLLEGES. There is hereby appropriated from special funds derived from federal funds and other income, the sums as hereinafter provided, or so much thereof as may be necessary, to the various community and junior colleges for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Bismarck junior college	\$ 7,936,453
Lake Region community college	1,845,715
University of North Dakota - Williston center	2,438,941
Total	<u>\$12,221,109</u>

SECTION 4. APPROPRIATION. Any community college 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 budgets appropriated by the legislative assembly to the community colleges must be deposited in their respective operating funds in the state treasury and can be expended only by authorization of the emergency commission.

SECTION 5. LEGISLATIVE INTENT - TUITION INCREASE. It is the intent of the legislative assembly that the board of higher education may increase tuition at the community colleges to provide an estimated additional \$92,886 of income during the 1985-87 biennium. The total amount of \$92,886 is included in the estimated income line items of the appropriations to the various community colleges in this Act. Nonresident students shall be equitably included in any tuition increases made pursuant to this section.

SECTION 6. TRANSFER. The state board of higher education may make such transfers between line items in section 1 of this Act, other than private college tuition assistance and student financial assistance grants, as may be necessary and manageable to provide for board and/or institutional budget requirements.

SECTION 7. APPROPRIATION. There is 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 private grants for the period beginning July 1, 1985, and ending June 30, 1987.

SECTION 8. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 16, 1985

CHAPTER 48

SENATE BILL NO. 2003
(Committee on Appropriations)

COLLEGES AND UNIVERSITIES

AN ACT making an appropriation for defraying the expenses of the various institutions of higher learning under the supervision of the state board of higher education of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 institutions of higher learning under the supervision of the state board of higher education of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

UNIVERSITY OF NORTH DAKOTA

Salaries and wages	\$ 63,886,551
Operating expenses	20,516,440
Equipment	1,513,115
Total operating budget	\$ 85,916,206
Less estimated income	23,544,896
Net operating budget	\$ 62,371,310
Capital improvements	1,330,150
Total general fund appropriation	\$ 63,701,460

Subdivision 2.

NORTH DAKOTA STATE UNIVERSITY
OF AGRICULTURE AND APPLIED SCIENCE

Salaries and wages	\$ 56,158,809
Operating expenses	16,967,954
Equipment	1,032,564
Total operating budget	\$ 74,159,327
Less estimated income	21,552,065
Net operating budget	\$ 52,607,262
Capital improvements	1,330,150

Total general fund appropriation		\$ 53,937,412
Subdivision 3.		
NORTH DAKOTA STATE SCHOOL OF SCIENCE		
Salaries and wages		\$ 19,676,495
Operating expenses		5,264,459
Equipment		719,779
Total operating budget		<u>\$ 25,660,733</u>
Less estimated income		7,157,123
Net operating budget		<u>\$ 18,503,610</u>
Capital improvements		369,050
Total general fund appropriation		<u>\$ 18,872,660</u>
Subdivision 4.		
DICKINSON STATE COLLEGE		
Salaries and wages		\$ 8,502,255
Operating expenses		2,831,252
Equipment		187,047
Total operating budget		<u>\$ 11,520,554</u>
Less estimated income		2,153,010
Net operating budget		<u>\$ 9,367,544</u>
Capital improvements		157,154
Total general fund appropriation		<u>\$ 9,524,698</u>
Subdivision 5.		
MAYVILLE STATE COLLEGE		
Salaries and wages		\$ 5,960,478
Operating expenses		1,844,974
Equipment		91,530
Total operating budget		<u>\$ 7,896,982</u>
Less estimated income		1,507,831
Net operating budget		<u>\$ 6,389,151</u>
Capital improvements		73,274
Total general fund appropriation		<u>\$ 6,462,425</u>
Subdivision 6.		
MINOT STATE COLLEGE		
Salaries and wages		\$ 16,789,675
Operating expenses		3,091,282
Equipment		250,014
Total operating budget		<u>\$ 20,130,971</u>
Less estimated income		7,114,893
Net operating budget		<u>\$ 13,016,078</u>
Capital improvements		451,924
Total general fund appropriation		<u>\$ 13,468,002</u>
Subdivision 7.		
VALLEY CITY STATE COLLEGE		
Salaries and wages		\$ 7,593,248
Operating expenses		2,016,152
Equipment		140,307
Total operating budget		<u>\$ 9,749,707</u>
Less estimated income		2,335,167
Net operating budget		<u>\$ 7,414,540</u>

Capital improvements	181,220
Total general fund appropriation	\$ 7,595,760

Subdivision 8.

STATE SCHOOL OF FORESTRY - BOTTINEAU

Salaries and wages	\$ 3,030,486
Operating expenses	731,334
Equipment	86,389
Total operating budget	\$ 3,848,209
Less estimated income	819,979
Net operating budget	\$ 3,028,230
Capital improvements	121,065
Total general fund appropriation	\$ 3,149,295

Subdivision 9.

UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER

Salaries and wages	\$ 32,558,926
Operating expenses	11,703,527
Equipment	752,191
Genetics program	105,000
Total all funds	\$ 45,119,644
Less estimated income	17,415,381
Total general fund appropriation	\$ 27,704,263

Subdivision 10.

MEDICAL CENTER REHABILITATION HOSPITAL

Salaries and wages	\$ 14,623,139
Operating expenses	5,716,692
Equipment	205,192
Total appropriation from institutional income	\$ 20,545,023

Subdivision 11.

NORTH DAKOTA STATE UNIVERSITY - STATE TOXICOLOGIST

Salaries and wages	\$ 464,689
Operating expenses	99,160
Equipment	23,000
Total all funds	\$ 586,849
Less estimated income	144,157
Total general fund appropriation	\$ 442,692

Subdivision 12.

NORTH DAKOTA FOREST SERVICE

Salaries and wages	\$ 1,219,716
Operating expenses	360,403
Equipment	56,035
Total operating budget	\$ 1,636,154
Less estimated income	643,027
Net operating budget	\$ 993,127
Capital improvements	30,100
Total general fund appropriation	\$ 1,023,227

Grand total general fund appropriation S.B. 2003	\$206,881,894
Grand total special funds appropriation S.B. 2003	\$104,932,552
Grand total all funds appropriation S.B. 2003	\$311,814,446

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. 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 can be expended only by authorization of the emergency commission.

SECTION 4. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 5. TRANSFERS. Each institution or agency included in this Act, upon approval from the board of higher education, may make such transfers between line items in its appropriation as may be determined necessary by the board of higher education for operations of the institution or agency.

SECTION 6. 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 state board of higher education for the biennium beginning July 1, 1985, and ending June 30, 1987. This appropriation shall be used by the board of higher education for critical needs of the institutions of higher education provided for in the constitution and as included in this Act for faculty or other positions, operating expenses, and equipment as may be determined by the board. This appropriation shall not be used to increase employees' salaries. When making allocations to institutions, the board of higher education shall consider the future mission of each institution, and consider reduction or elimination of selective programs and services, admission standards, and the reallocation of resources within each institution. The board of higher education shall notify the office of management and budget of the allocations to each institution made from this appropriation.

SECTION 7. LEGISLATIVE INTENT - TUITION INCREASE. It is the intent of the Legislative Assembly that the board of higher education may increase tuition at the institutions of higher education to provide an estimated additional \$2,000,000 of income during the 1985-87 biennium. The total amount of \$2,000,000 is included in the estimated income line items of the appropriations to the various institutions in this Act. Nonresident students shall be equitably included in any tuition increases made pursuant to this section.

Approved April 16, 1985

CHAPTER 49

SENATE BILL NO. 2005
(Committee on Appropriations)

BOARD OF VOCATIONAL EDUCATION

AN ACT making an appropriation for defraying the expenses of the state board of vocational education of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 vocational education of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 1,971,176
Operating expenses	462,739
Data processing	35,713
Equipment	26,050
Grants, benefits, and claims	19,459,806
State advisory council	250,000
Total all funds	\$ 22,205,484
Less estimated income	7,654,989
Total general fund appropriation	\$ 14,550,495

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 50

SENATE BILL NO. 2007
 (Committee on Appropriations)

HUMAN SERVICES, PENITENTIARY, GRAFTON
 STATE SCHOOL, SAN HAVEN, TRANSITION,
 GOVERNOR-ELECT, DEINSTITUTIONALIZATION
 COURT MONITOR

AN ACT making an appropriation for defraying the expenses of various departments and institutions of the state of North Dakota; providing for a transfer; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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, 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, 1985, and ending June 30, 1985, as follows:

Subdivision 1.

DEPARTMENT OF HUMAN SERVICES

Grants, benefits, and claims	\$ 7,006,514
Total all funds	\$ 7,006,514
Less estimated income	3,840,044
Total general fund appropriation	\$ 3,166,470

Subdivision 2.

STATE PENITENTIARY

Salaries and wages	\$ 62,000
Operating expenses	521,000
Total all funds	\$ 583,000
Less estimated income	90,000
Total general fund appropriation	\$ 493,000

Subdivision 3.

GRAFTON STATE SCHOOL

Salaries and wages	\$ 900,049
Operating expenses	1,215,730
Equipment	100,000
Total special funds appropriation	\$ 2,215,779

Subdivision 4.		
	SAN HAVEN	
Salaries and wages		\$ 117,588
Operating expenses		<u>414,274</u>
Total special funds appropriation		\$ 531,862
Subdivision 5.		
	GOVERNOR'S TRANSITION	
Governor's transition		\$ 10,500
Total general fund appropriation		<u>\$ 10,500</u>
Subdivision 6.		
	GOVERNOR-ELECT	
Governor-elect		\$ 10,000
Total general fund appropriation		<u>\$ 10,000</u>
Subdivision 7.		
	DEINSTITUTIONALIZATION COURT MONITOR	
Operating expenses		\$ 71,800
Total general fund appropriation		<u>\$ 71,800</u>
Grand total general fund appropriation S.B. 2007		\$ 3,751,770
Grand total special funds appropriation S.B. 2007		\$ 6,677,685
Grand total all funds appropriation S.B. 2007		\$10,429,455

SECTION 2. AUTHORITY TO TRANSFER EXCESS REVENUE. In the event the amount of other income received by San Haven is less than the amount included in its appropriation authority for the 1983-85 biennium, the authority is hereby granted for the transfer of any excess revenues received by the Grafton state school to San Haven up to the appropriation authority granted San Haven for the 1983-85 biennium.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in full effect upon its passage and approval.

Approved April 9, 1985

CHAPTER 51

SENATE BILL NO. 2009
(Committee on Appropriations)

EXTENSION DIVISION AND EXPERIMENT STATIONS

AN ACT making an appropriation for defraying the expenses of the cooperative extension division and the experiment stations of North Dakota state university of agriculture and applied science; to amend and reenact sections 38-14.1-04.2 and 38-14.1-04.3 of the North Dakota Century Code, relating to the reclamation research advisory committee; and providing for a transfer of funds from the coal development impact fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 cooperative extension division and experiment stations of North Dakota state university of agriculture and applied science, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

COOPERATIVE EXTENSION DIVISION

Salaries and wages	\$ 17,532,714
Operating expenses	3,423,294
Equipment	<u>303,811</u>
Total all funds	\$ 21,259,819
Less estimated income	<u>12,225,763</u>
Total general fund appropriation	\$ 9,034,056

Subdivision 2.

EXTENSION DIVISION
FOOD AND NUTRITION PROGRAM

Salaries and wages	\$ 718,384
Operating expenses	56,843
Equipment	<u>1,500</u>
Total special funds appropriation	\$ 776,727

Subdivision 3.

EXTENSION DIVISION
ENERGY SERVICE

Salaries and wages	\$	177,663
Operating expenses		7,456
Equipment		500
Total special funds appropriation	\$	<u>185,619</u>

Subdivision 4.

NORTHERN CROPS INSTITUTE

Salaries and wages	\$	390,917
Operating expenses		107,800
Equipment		181,700
Total all funds	\$	<u>680,417</u>
Less estimated income		166,500
Total general fund appropriation	\$	<u>513,917</u>

Subdivision 5.

MAIN EXPERIMENT STATION

Salaries and wages	\$	25,884,132
Operating expenses		5,667,709
Equipment		1,200,000
Total operating budget	\$	<u>32,751,841</u>
Less estimated income		11,984,163
Net operating budget	\$	<u>20,767,678</u>
Capital improvements		445,000
Total general fund appropriation	\$	<u>21,212,678</u>

Subdivision 6.

DICKINSON EXPERIMENT STATION

Salaries and wages	\$	663,017
Operating expenses		399,507
Equipment		76,000
Total operating budget	\$	<u>1,138,524</u>
Less estimated income		220,300
Net operating budget	\$	<u>918,224</u>
Capital improvements		22,000
Total general fund appropriation	\$	<u>940,224</u>

Subdivision 7.

CENTRAL GRASSLAND EXPERIMENT STATION

Salaries and wages	\$	315,962
Operating expenses		353,558
Equipment		152,000
Total all funds	\$	<u>821,520</u>
Less estimated income		100,000
Total general fund appropriation	\$	<u>721,520</u>

Subdivision 8.

HETTINGER EXPERIMENT STATION

Salaries and wages	\$	320,334
Operating expenses		172,465
Equipment		67,450
Total operating budget	\$	<u>560,249</u>
Less estimated income		124,000

Net operating budget	\$	436,249
Capital improvements		7,500
Total general fund appropriation	\$	<u>443,749</u>

Subdivision 9.

LANGDON EXPERIMENT STATION

Salaries and wages	\$	341,776
Operating expenses		158,700
Equipment		80,200
Total operating budget	\$	<u>580,676</u>
Less estimated income		80,000
Net operating budget	\$	<u>500,676</u>
Capital improvements		30,000
Total general fund appropriation	\$	<u>530,676</u>

Subdivision 10.

NORTH CENTRAL EXPERIMENT STATION

Salaries and wages	\$	351,561
Operating expenses		218,426
Equipment		66,900
Total all funds	\$	<u>636,887</u>
Less estimated income		289,709
Total general fund appropriation	\$	<u>347,178</u>

Subdivision 11.

WILLISTON EXPERIMENT STATION

Salaries and wages	\$	391,723
Operating expenses		120,701
Equipment		50,000
Total all funds	\$	<u>562,424</u>
Less estimated income		106,000
Total general fund appropriation	\$	<u>456,424</u>

Subdivision 12.

CARRINGTON EXPERIMENT STATION

Salaries and wages	\$	635,706
Operating expenses		468,250
Equipment		69,000
Total operating budget	\$	<u>1,172,956</u>
Less estimated income		385,000
Net operating budget	\$	<u>787,956</u>
Capital improvements		10,000
Total general fund appropriation	\$	<u>797,956</u>

Subdivision 13.

AGRONOMY SEED FARM

Salaries and wages	\$	210,385
Operating expenses		342,800
Equipment		117,500
Capital improvements		158,000
Total special funds appropriation	\$	<u>828,685</u>

Subdivision 14.

LAND RECLAMATION RESEARCH CENTER

Salaries and wages	\$ 1,223,318
Operating expenses	82,470
Equipment	13,000
Total special funds appropriation	\$ 1,318,788
Grand total general fund appropriation S.B. 2009	\$ 34,998,378
Grand total special funds appropriation S.B. 2009	\$ 30,091,254
Grand total all funds appropriation S.B. 2009	\$ 65,089,632

Any additional income, including funds from the federal government and gifts and donations from private sources received by the North Dakota main experiment station, branch stations, and the cooperative extension division, except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation. However, public moneys from local sources, which shall include receipts from sale of grains, personal services, dairy products, livestock, and other agricultural products at the North Dakota main experiment station, branch experiment stations, and cooperative extension division, may be expended in excess of that specifically appropriated through biennial appropriations bills of the legislative assembly only in the event that an authorization has first been received from the emergency commission. The balances of all existing moneys on deposit in the name of the North Dakota state university main experiment station, the branch experiment stations, and the cooperative extension division, except grants, gifts, and donations from private sources, along with all subsequent receipts of such moneys, shall be deposited in a special fund in the state treasury. Hereafter, this fund shall be referred to as an operating fund and shall also be the depository for transfers from the general fund, and balances therein shall not revert to any other fund under the terms of section 54-44.1-11. All of the moneys in the operating fund shall 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, shall 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, 1985, exceeds the estimated income for the biennium ending June 30, 1987. The state board of higher education is authorized to approve transfer of funds between categories of expenditures, and will notify the director of the office of management and budget of any such transfers within ten days following such authorization.

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

SECTION 3. APPROPRIATION - TRANSFER. There is hereby authorized, as included in the appropriation to the land reclamation

research center in subdivision 14 of section 1 of this Act, a transfer of \$726,365 which is hereby appropriated, or so much thereof as may be necessary, from the coal development impact fund for the purpose of funding reclamation research projects. Such funds shall be transferred at the direction of the office of management and budget upon notification from the director of the energy development impact office, from the coal development impact fund to the land reclamation research center operating fund for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 4. INTENT. In approving section 3, it is the intent of the legislative assembly that the funds appropriated be used for the following research projects:

1. Prime farmland soil productivity;
2. Development of productivity indices for reclaimed land;
3. Soil respreading and depth of soil replacement; and
4. Run-off and erosion on reclaimed land.

In addition, it is the intent of the legislative assembly that the land reclamation research center file an annual report with the legislative council and the public service commission on August 1, 1985, August 1, 1986, and August 1, 1987. The annual report shall 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 shall also include any recommendations it may have for reducing unnecessary and duplicative regulatory costs that are not required by federal or state reclamation law and which 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.
3. Development of data and conclusion that will reduce unnecessary regulatory costs and assist in effectively reclaiming the land to its original or better productivity.

SECTION 5. AMENDMENT. Section 38-14.1-04.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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. ~~Preparation of~~ 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 38-14.1-04.3 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-04.3. Reclamation research objectives. The reclamation research advisory committee shall make all recommendations on the specific reclamation research projects that are to be funded from moneys administered by the commission. Prior to awarding reclamation research funds, the commission must ~~receive~~ consider the recommendations of the committee relating to the proposed reclamation research project. For any reclamation research project to be approved for funding by the commission, each proposed project must meet 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.
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 7. 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 8. APPROPRIATION. There is hereby appropriated \$300,000 to the main experiment station, out of any funds available from the sale of animals by the experiment stations due to adverse climate conditions, for the purpose of purchasing replacement animals at the respective experiment stations during the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 9. RESEARCH/EXTENSION CONSTRUCTION - APPROPRIATION. Provision is hereby made in this section for the main agricultural experiment station or any of its branch stations to accept a gift dedicated to the construction of a facility to house research and extension service staff. The facility is to be constructed at or near the station headquarters site. The total construction cost shall not exceed \$1,000,000. Any funds received are hereby appropriated, but shall not be expended pursuant to this section without the approval of the legislative council's budget section.

Approved April 16, 1985

CHAPTER 52

SENATE BILL NO. 2010
(Committee on Appropriations)

DEPARTMENT OF HEALTH AND ABANDONED MOTOR VEHICLES DIVISION

AN ACT making an appropriation for defraying the expenses of the department of health and the abandoned motor vehicles division of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 the abandoned motor vehicles division of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

	DEPARTMENT OF HEALTH	
Salaries and wages		\$ 13,658,539
Operating expenses		16,009,800
Data processing		549,900
Equipment		465,100
Grants, benefits, and claims		6,040,700
Lake rehabilitation		300,000
Total all funds		<u>\$ 37,024,039</u>
Less estimated income		26,736,194
Total general fund transfer and appropriation		<u>\$ 10,287,845</u>

Subdivision 2.

	ABANDONED MOTOR VEHICLES DIVISION	
Grants, benefits, and claims		\$ 400,000
Total special funds appropriation		<u>\$ 400,000</u>
Grand total general fund appropriation S.B. 2010		\$ 10,287,845
Grand total special funds appropriation S.B. 2010		\$ 27,136,194
Grand total all funds appropriation S.B. 2010		\$ 37,424,039

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 16, 1985

CHAPTER 53

SENATE BILL NO. 2011
(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 THE STATE 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, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 169,540
Operating expenses	30,500
Equipment	845
Native American alcohol and drug abuse education	335,000
Grants, benefits, and claims	200,000
Data processing	4,000
Total general fund appropriation	<u>\$ 739,885</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

Approved April 16, 1985

CHAPTER 54

SENATE BILL NO. 2012
 (Committee on Appropriations)

STATE LABORATORIES DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the state laboratories department of the state of North Dakota; and to amend and reenact section 19-01-07 of the North Dakota Century Code, relating to fees paid the state laboratories department for contract services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 the capitol building fund and other income to the state laboratories department of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 1,783,081
Operating expenses	468,488
Data processing	29,870
Contract services expenses	50,000
Capital improvements	160,000
Equipment	48,070
Total all funds	\$ 2,539,509
Less estimated income	210,000
Total general fund appropriation	\$ 2,329,509

* SECTION 2. AMENDMENT. Section 19-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-07. Fees - Disposition. All revenues received and fees and charges collected under the provisions of this title shall be properly accounted for daily by the assistant director and employees to the director of the department and by him recorded and entered upon his books by counties from which the fees and charges are received. The director shall forward all moneys so collected to the state treasurer monthly, and the treasurer shall place the same in the general fund of the state. Funds may be accepted from cities,

* NOTE: Section 19-01-07 was also amended by section 4 of House Bill No. 1590, chapter 258.

counties, states, federal agencies, and private organizations for contract services of analytical and inspection work. Such funds shall be remitted by the department to the state treasurer and deposited in a special account in the state treasury, designated the "state laboratories contract servicers fund" to be used exclusively to carry out the intent and purposes of this section. Such funds are retained by the department for payment of expenditures incurred in rendering such services and are hereby appropriated to the department to be disbursed by the department in accordance with the intent and purposes of this section. Funds in excess of fifty thousand dollars received and disbursed during any biennial period pursuant to this section shall require emergency commission approval.

SECTION 3. APPROPRIATION - TRANSFER. The amount appropriated in section 1 of this Act includes \$160,000 which shall be transferred by the office of management and budget from the capitol building fund for the biennium beginning July 1, 1985, and ending June 30, 1987, as required for disbursement by the state laboratories department.

SECTION 4. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 16, 1985

CHAPTER 55

SENATE BILL NO. 2013
(Committee on Appropriations)

AERONAUTICS COMMISSION

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 288,148
Operating expenses	96,529
Data processing	1,395
Equipment	12,915
Capital improvements	495,000
Grants, benefits, and claims	3,000,000
Total all funds	\$ 3,893,987
Less estimated income	2,901,077
Total general fund transfer and appropriation	\$ 992,910

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 16, 1985

CHAPTER 56

SENATE BILL NO. 2014
(Committee on Appropriations)

WEATHER MODIFICATION BOARD

AN ACT making an appropriation for defraying the expenses of the weather modification board of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 weather modification board of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 305,044
Operating expenses	1,267,833
Equipment	9,772
Data processing	43,895
Research - weather modification	<u>1,050,000</u>
Total all funds	\$ 2,676,544
Less estimated income	<u>1,935,377</u>
Total general fund appropriation	\$ 741,167

SECTION 2. APPROPRIATION. There is hereby appropriated, upon the approval of the emergency commission, from special funds derived from federal funds and other income, such moneys as become available during the biennium beginning July 1, 1985, and ending June 30, 1987, to the weather modification board of the state of North Dakota for the purpose of increasing the level of the cooperative research program.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 16, 1985

CHAPTER 57

SENATE BILL NO. 2015
 (Committee on Appropriations)

DEPARTMENT OF BANKING AND FINANCIAL
 INSTITUTIONS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 department of banking and financial institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$1,309,381
Operating expenses	235,243
Data processing	500
Equipment	<u>1,156</u>
Total general fund appropriation	\$1,546,280

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

SECTION 3. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 11, 1985

CHAPTER 58

SENATE BILL NO. 2016
(Committee on Appropriations)

SECURITIES COMMISSIONER

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 449,472
Operating expenses	45,390
Data processing	250
Equipment	<u>2,500</u>
Total general fund appropriation	\$ 497,612

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 15, 1985

CHAPTER 59

SENATE BILL NO. 2017
(Committee on Appropriations)

LIVESTOCK SANITARY BOARD

AN ACT making an appropriation for defraying the expenses of the livestock sanitary board of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 livestock sanitary board of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 332,449
Operating expenses	158,352
Equipment	<u>2,320</u>
Total general fund appropriation	\$ 493,121

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 60

SENATE BILL NO. 2018
(Committee on Appropriations)

MILK STABILIZATION BOARD

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 280,516
Operating expenses	154,163
Equipment	1,564
Contingency	7,500
Total special fund appropriation	\$ 443,743

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 11, 1985

CHAPTER 61

SENATE BILL NO. 2019
(Committee on Appropriations)

STATE FAIR ASSOCIATION

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 of the state of North Dakota, for the purpose of defraying premium expenses, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Premiums	\$ 250,000
Total general fund appropriation	\$ 250,000

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 62

SENATE BILL NO. 2021
(Committee on Appropriations)

COUNCIL ON THE ARTS

AN ACT making an appropriation for defraying the expenses of the council on the arts of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 242,767
Operating expenses	163,385
Equipment	1,000
Grants, benefits, and claims	<u>1,354,690</u>
Total all funds	<u>\$1,761,842</u>
Less estimated income	<u>1,265,450</u>
Total general fund appropriation	<u>\$ 496,392</u>

SECTION 2. APPROPRIATION. All income from the cultural arts endowment fund is hereby appropriated for the furthering of the cultural arts in the state of North Dakota for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 3. LEGISLATIVE AUTHORIZATION. The North Dakota council on the arts is authorized to apply for a three-year federal grant for the national endowment for the arts test program of support for local arts agencies. The grants, benefits, and claims line item in section 1 of this Act includes \$200,000 for this purpose during the 1985-87 biennium, \$100,000 from the general fund and \$100,000 from federal funds. The \$100,000 general fund appropriation may not be expended unless \$200,000 of local matching funds is made available during the 1985-87 biennium. The council on the arts is authorized to request funding for the third year of this grant during the 1987-89 biennium.

SECTION 4. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 63

SENATE BILL NO. 2023
(Committee on Appropriations)

HIGHWAY PATROL

AN ACT making an appropriation for defraying the expenses of the highway patrol of the state of North Dakota; and providing for a transfer of funds from the state highway fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 highway patrol of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

HIGHWAY PATROL

Salaries and wages	\$ 12,154,312
Operating expenses	2,801,855
Data processing	158,342
Equipment	945,267
Capital improvements	<u>55,000</u>
Total all funds	\$ 16,114,776
Less estimated income	<u>11,072,046</u>
Total general fund appropriation	\$ 5,042,730

SECTION 2. APPROPRIATION. Each patrolman of the state highway patrol shall receive from funds appropriated in the operating expenses line item in section 1 of this Act an amount not to exceed \$120 per month for the biennium beginning July 1, 1985, and ending June 30, 1987. 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.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. APPROPRIATION - TRANSFER. There is hereby appropriated in the income line item of section 1 of this Act, the sum of \$11,072,046, or so much thereof as may be necessary, from the state highway fund, to be transferred at the direction of the office of management and budget, for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 15, 1985

CHAPTER 64

SENATE BILL NO. 2024
(Committee on Appropriations)

HIGHWAY DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the highway department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 highway department of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 57,159,394
Operating expenses	47,389,292
Data processing	2,125,759
Equipment	6,368,839
Grants, benefits, and claims	4,127,431
Capital improvements	8,444,900
Contracts	<u>226,571,201</u>
Total all funds	\$352,186,816
Less estimated special funds	<u>352,156,816</u>
Total general fund appropriation	\$ 30,000

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION. In addition to the appropriation in section 1 of this Act there is hereby appropriated to the highway department any additional federal funds which may become available during the biennium beginning July 1, 1985, and ending June 30, 1987. Such funds shall be expended only with prior authorization from the emergency commission.

Approved April 11, 1985

CHAPTER 65

SENATE BILL NO. 2025
(Committee on Appropriations)

GEOLOGICAL SURVEY AND UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

AN ACT making an appropriation for defraying the expenses of the geological survey and the upper great plains transportation institute of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 lands and minerals trust fund in the state treasury as provided for in section 15-08.1-08 of the North Dakota Century Code, not otherwise appropriated, to the geological survey under the supervision of the board of higher education of the state of North Dakota, and from special funds derived from federal funds and other income to the upper great plains transportation institute of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

GEOLOGICAL SURVEY

Salaries and wages	\$ 1,584,761
Operating expenses	293,631
Equipment	<u>100,050</u>
Total appropriation from lands and minerals trust fund	\$ 1,978,442

Subdivision 2.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Salaries and wages	\$ 390,180
Operating expenses	96,899
Equipment	<u>12,411</u>
Total all funds	\$ 499,490
Less estimated income	<u>222,490</u>
Total general fund appropriation	\$ 277,000
Grand total general fund appropriations S.B. 2025	\$ 277,000
Grand total special funds appropriated S.B. 2025	\$ 2,200,932
Grand total all funds appropriated S.B. 2025	\$ 2,477,932

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 4. APPROPRIATION. There is hereby appropriated to the geological survey any federal funds that become available for the purposes of monitoring the underground injection control program and monitoring coal exploration drilling for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 16, 1985

CHAPTER 66

SENATE BILL NO. 2026
(Committee on Appropriations)

MOTOR VEHICLE DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the motor vehicle department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 motor vehicle registration fund in the state treasury, not otherwise appropriated, to the motor vehicle department of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 2,055,951
Operating expenses	1,517,535
Data processing	695,879
License plates and tabs	787,000
Equipment	12,500
Special refunds	25,700
Contingency fund	<u>50,000</u>
Total appropriation from motor vehicle registration fund	\$ 5,144,565

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 11, 1985

CHAPTER 67

SENATE BILL NO. 2027
(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 of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 lands maintenance fund in the state treasury, not otherwise appropriated, to the commissioner of university and school lands of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 867,485
Operating expenses	140,455
Data processing	51,380
Equipment	3,600
Grants	167,365
Contingency fund	35,000
Total appropriation from state lands maintenance fund	<u>\$1,265,285</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 68

SENATE BILL NO. 2028
(Committee on Appropriations)

INDUSTRIAL COMMISSION AND AGENCIES UNDER ITS CONTROL

AN ACT making an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 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, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	\$ 2,157,760
Operating expenses	457,826
Data processing	195,800
Equipment	158,117
Contingency	10,000
Total appropriation from land and minerals trust fund	<u>\$ 2,979,503</u>

Subdivision 2.

BANK OF NORTH DAKOTA

Salaries and wages	\$ 6,152,543
Operating expenses	3,888,331
Data processing	3,062,242
Equipment	544,725
Contingency	150,000
Total appropriation from Bank of North Dakota fund	<u>\$ 13,797,841</u>

Subdivision 3.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$ 8,575,650
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Operating expenses	4,835,618
Agriculture promotion	75,000
Emergency fund	500,000
Total appropriation from mill and elevator fund	<u>\$ 13,986,268</u>

Subdivision 4.

HOUSING FINANCE AGENCY

Salaries and wages	\$ 1,219,771
Operating expenses	425,225
Data processing	124,242
Equipment	10,000
Grants	25,920,000
HFA contingency	72,606
HFA reserve	<u>1,300,000</u>
Total special funds appropriation	\$ 29,071,844
Grand total special funds appropriation S.B. 2028	\$ 59,876,771
Grand total all funds appropriation S.B. 2028	\$ 59,876,771

SECTION 2. APPROPRIATION. There is hereby appropriated from the lands and minerals trust fund in the state treasury the sum of \$41,315, or so much thereof as may be necessary, to the state industrial commission, for the purpose of having an electric oil well log microfilm library at the Williston community library during the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 3. APPROPRIATION. There is hereby appropriated from the abandoned oil and gas well plugging and site restoration fund in the state treasury all funds available and which may become available, or so much thereof as may be necessary, to the state industrial commission, for the purpose of entering into contracts for the plugging or replugging of oil and gas wells and the reclamation of abandoned well sites for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 4. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in 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, 1985, and ending June 30, 1987.

SECTION 5. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 6. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 16, 1985

CHAPTER 69

SENATE BILL NO. 2029
(Committee on Appropriations)

PUBLIC EMPLOYEES RETIREMENT SYSTEM

AN ACT making an appropriation for defraying the administrative costs of the public employees retirement system, and the deferred compensation committee of the state of North Dakota; to provide for a transfer; to amend and reenact section 54-52.1-04.2 of the North Dakota Century Code, relating to the self-insurance plan for hospital and medical benefits coverage; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 public employees retirement fund in the state treasury, not otherwise appropriated, to the public employees retirement system, and the deferred compensation committee of the state of North Dakota, for the purpose of defraying the administrative costs of the divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

PUBLIC EMPLOYEES RETIREMENT BOARD

Salaries and wages	\$ 704,504
Operating expenses	293,154
Data processing	610,163
Equipment	11,639
Contingency	50,000
Total appropriation from public employees retirement fund	\$1,669,460

Subdivision 2.

DEFERRED COMPENSATION COMMITTEE

Salaries and wages	\$ 59,461
Operating expenses	7,638
Data processing	3,000
Equipment	1,500
Total appropriation from public employees retirement fund	\$ 71,599

Grand total special funds appropriation S.B. 2029 \$1,741,059

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 4. UNIFORM GROUP INSURANCE PROGRAM RESERVE FUND - TRANSFER. The public employees retirement system shall transfer from the uniform group insurance program reserve fund to the general fund in the state treasury on March 1, 1987, the sum of \$1,000,000. The public employees retirement system shall transfer from the uniform group insurance program reserve fund to the general fund in the state treasury on July 1, 1987, or at an earlier date as sufficient information may become available, the amount that the estimated June 30, 1987, unobligated reserve balance relating to amounts paid by state agencies and institutions exceeds \$1,500,000.

SECTION 5. AMENDMENT. Section 54-52.1-04.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-04.2. Self-insurance plan for hospital and medical benefits coverage. The board may establish a self-insurance plan for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third party administrator (TPA) contract under the uniform group insurance program, if it is determined by the board that an (ASO) or (TPA) plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. In addition, individual and aggregate stop-loss coverage insured by a carrier authorized to do business in this state must be made part of any self-insured plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

SECTION 6. EMERGENCY. Section 5 of this Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 10, 1985

CHAPTER 70

SENATE BILL NO. 2030
(Committee on Appropriations)

TEACHERS' FUND FOR RETIREMENT

AN ACT making an appropriation for defraying the administrative costs of the teachers' fund for retirement of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 teachers' fund for retirement in the state treasury, not otherwise appropriated, to the teachers' fund for retirement of the state of North Dakota for the purpose of defraying the administrative costs thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 405,217
Operating expenses	267,301
Data processing	322,986
Equipment	3,642
Contingency	50,000
Total appropriation from teachers' fund for retirement	<u>\$1,049,146</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 16, 1985

CHAPTER 71

SENATE BILL NO. 2031
 (Committee on Appropriations)

JOB SERVICE, OASIS, AND SOCIAL SECURITY

AN ACT making an appropriation for defraying the expenses of job service North Dakota and divisions thereof of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

JOB SERVICE NORTH DAKOTA

Salaries and wages	\$ 22,323,005
Operating expenses	5,490,944
Equipment	<u>193,865</u>
Total special funds appropriation	\$ 28,007,814

Subdivision 2.

NORTH DAKOTA OASIS AND SOCIAL SECURITY

Salaries and wages	\$ 231,208
Operating expenses	102,300
Equipment	<u>2,000</u>
Total appropriation from social security contribution fund	\$ 335,508

Grand total special funds appropriation S.B. 2031 \$ 28,343,322

SECTION 2. APPROPRIATION. All federal funds received by job service North Dakota in excess of those funds appropriated in subdivision 1 of section 1 of this Act are hereby appropriated for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

CHAPTER 72

SENATE BILL NO. 2032
(Committee on Appropriations)

WORKMEN'S COMPENSATION BUREAU

AN ACT making an appropriation for defraying the expenses of the workmen's compensation bureau and the divisions thereof of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 workmen's compensation fund in the state treasury, not otherwise appropriated, to the workmen's compensation bureau of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

WORKMEN'S COMPENSATION BUREAU

Salaries and wages	\$ 3,240,226
Operating expenses	947,749
Data processing	781,487
Equipment	47,548
Contingent	75,000
Total appropriation from workmen's compensation fund	\$ 5,092,010

Subdivision 2.

CRIME VICTIMS REPARATION

Grants	\$ 303,500
Total	\$ 303,500
Less estimated income	70,000
Total general fund appropriation	\$ 233,500
Grand total general fund appropriation S.B. 2032	\$ 233,500
Grand total special funds appropriation S.B. 2032	\$ 5,162,010
Grand total all funds appropriation S.B. 2032	\$ 5,395,510

SECTION 2. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

SECTION 4. BUDGET SECTION AUTHORIZATION - DATA PROCESSING AND ACCOUNTING SYSTEMS. The workmen's compensation bureau shall make periodic reports during the 1985-86 interim to the budget section of the legislative council regarding the bureau's progress in the modernization of its data processing and accounting systems. Funding in the amount of \$561,487 for this project is provided in the data processing line item in subdivision 1 of section 1 of this Act. The bureau may expend the funds for such project only upon the approval of the budget section.

SECTION 5. OFFICE OF MANAGEMENT AND BUDGET APPROVAL REQUIRED - ACCOUNTANT - MANAGEMENT POSITION - DATA PROCESSING AND ACCOUNTING SYSTEMS. It is the intent of the legislative assembly that the current unclassified position of executive director at the workmen's compensation bureau be changed to a classified position. Funding in the amount of \$86,849 for salaries and wages and \$561,487 for the data processing and accounting system project provided in the data processing line item in subdivision 1 of section 1 of this Act may be expended by the bureau only after the bureau has certified to the director of the office of management and budget, and subject to the director's approval, that a person has been hired to fill the position who is either a licensed public accountant, a certified public accountant, or has a master's in business administration degree (MBA) and has adequate general management experience and is qualified and capable of implementing data processing, accounting and management information systems that are modern and efficient.

SECTION 6. OFFICE RELOCATION - APPROVAL. The workmen's compensation bureau before moving from its present location, must obtain approval from the budget section of the legislative council, director of institutions, and emergency commission. Expenditures may be made pursuant to the contingency line item in subdivision 1 of section 1 of this Act for rent expense only upon approval from the budget section, director of institutions, and emergency commission.

Approved April 15, 1985

CHAPTER 73

SENATE BILL NO. 2033
(Committee on Appropriations)

SCHOOL FOR THE DEAF AND SCHOOL FOR THE BLIND

AN ACT making an appropriation for defraying the expenses of the school for the deaf and the school for the blind of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 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 school for the deaf and the school for the blind under the supervision of the director of institutions of the state of North Dakota, for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Subdivision 1.

		SCHOOL FOR THE DEAF	
Salaries and wages			\$ 3,078,947
Operating expenses			861,983
Data processing			4,995
Equipment			51,670
Capital improvements			<u>134,000</u>
Total all funds			\$ 4,131,595
Less estimated income			<u>552,410</u>
Total general fund appropriation			\$ 3,579,185

Subdivision 2.

		SCHOOL FOR THE BLIND	
Salaries and wages			\$ 2,068,449
Operating expenses			480,952
Equipment			29,480
Capital improvements			<u>91,500</u>
Total all funds			\$ 2,670,381
Less estimated income			<u>414,889</u>
Total general fund appropriation			\$ 2,255,492
Grand total general fund appropriation S.B. 2033			\$ 5,834,677

Grand total special funds appropriated S.B. 2033	\$	967,299
Grand total all funds appropriated S.B. 2033	\$	6,801,976

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 15, 1985

CHAPTER 74

SENATE BILL NO. 2035
(Committee on Appropriations)

SOIL CONSERVATION COMMITTEE AND DISTRICTS

AN ACT making an appropriation for defraying the expenses of the soil conservation committee and soil conservation districts of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 districts of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Salaries and wages	\$ 295,878
Operating expenses	315,102
Data processing	200
Equipment	1,500
Grants, benefits, and claims	<u>825,000</u>
Total general fund appropriation	<u>\$1,437,680</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the court or courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1985

CHAPTER 75

SENATE BILL NO. 2036
(Committee on Appropriations)

MOTOR VEHICLE FUEL TAX TRANSFER

AN ACT to transfer a portion of motor vehicle fuel tax revenue to the general fund for the purpose of defraying the cost of administering the motor vehicle fuel tax laws.

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

SECTION 1. TRANSFER. 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 of the North Dakota Century Code, the sum of \$818,481 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.

Approved April 16, 1985

CHAPTER 76

SENATE BILL NO. 2037
(Committee on Appropriations)

MILL AND ELEVATOR PROFITS

AN ACT to transfer moneys from the accumulated and undivided profits of the North Dakota mill and elevator association to the general fund of the state of North Dakota.

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

SECTION 1. 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, 1985, and ending June 30, 1987, upon order of the industrial commission, with one-half of the transfer to be made no later than June 30, 1986.

Approved March 28, 1985

CHAPTER 77

SENATE BILL NO. 2090

(Legislative Council)

(Interim Legislative Procedure and Arrangements Committee)

CAPITOL LEGISLATIVE WING IMPROVEMENTS APPROPRIATION

AN ACT making an appropriation to the legislative assembly for the refinishing of woodwork and improvements to the state capitol; and declaring an emergency.

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

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the interest and income fund of the capitol building fund in the state treasury, not otherwise appropriated, the sum of \$187,200, or so much thereof as may be necessary, to the legislative assembly for the refinishing of woodwork and other improvements to the legislative wing and certain portions of the ground floor and the second floor levels of the executive tower of the state capitol. The legislative council or its designee shall administer this Act. The provisions of chapter 48-10 and section 54-44.1-11 do not apply to this appropriation.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 78

SENATE BILL NO. 2216
(Committee on Appropriations)
(At the request of Job Service North Dakota)

JOB SERVICE DATA PROCESSING

AN ACT making an appropriation out of funds made available under section 903 (Reed Act) of the Social Security Act to the state of North Dakota unemployment compensation fund to be used for automated data processing needs of job service North Dakota.

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

SECTION 1. APPROPRIATION. There is hereby appropriated out of funds made available to this state under section 903 of the Social Security Act, as amended, the sum of \$121,461.66, or so much thereof as may be necessary, to be used, under the direction of job service North Dakota, for its automated data processing needs.

SECTION 2. TIME LIMITATION ON OBLIGATION OF APPROPRIATED FUNDS. No part of the money hereby appropriated may be obligated after the expiration of the two-year period beginning on July 1, 1985.

SECTION 3. LIMITATION OF AMOUNT OBLIGATED DURING TWELVE-MONTH PERIOD. The amount obligated pursuant to this Act during any twelve-month period beginning on July first and ending on the next June thirtieth shall not exceed the amount by which (a) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act during such twelve-month period and the thirty-four preceding twelve-month periods exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such thirty-four twelve-month periods.

Approved April 11, 1985

CHAPTER 79

SENATE BILL NO. 2400
(Senators Holmberg, Heigaard)
(Representatives Kingsbury, Unhjem)

UND CENTER FOR INNOVATION AND BUSINESS
DEVELOPMENT

AN ACT to provide an appropriation to defray the expenses of a center for innovation and business development.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE 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 \$129,554, or so much thereof as may be necessary, to the economic development commission for the purpose of defraying the expenses of a center for innovation and business development at the University of North Dakota, for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 16, 1985

CHAPTER 80

SENATE BILL NO. 2507
(Heigaard)

(Approved by the Committee on Delayed Bills)

TAX LITIGATION

AN ACT to grant an appropriation for use in the defense of the litigation entitled Burlington Northern Railroad Company v. State of North Dakota, acting by and through the State Board of Equalization, et al, District Court, South Central Judicial District, Burleigh County Civil No. 35884.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 \$50,000, or so much thereof as may be necessary, to the tax commissioner, as secretary of the state board of equalization, for use in the defense of the litigation entitled Burlington Northern Railroad Company v. State of North Dakota, acting by and through the State Board of Equalization, et al, District Court, South Central Judicial District, Burleigh County Civil No. 35884, by the state and its counties, provided the appropriation is to be used only at the direction of the state board of equalization.

Approved April 15, 1985

CHAPTER 81

SENATE BILL NO. 2511
(Nothing)
(Approved by the Committee on Delayed Bills)

**PERSONAL PROPERTY TAX REPLACEMENT
DEFICIENCY**

AN ACT making an appropriation to the state tax commissioner for personal property tax replacement deficiency payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 \$8,507,654, or so much thereof as may be necessary, to the state tax commissioner for personal property tax replacement payments for the period beginning January 1, 1985, and ending June 30, 1985.

Approved April 11, 1985

GENERAL PROVISIONS

CHAPTER 82

SENATE BILL NO. 2086
(Legislative Council)
(Interim Judiciary "B" Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to create and enact subsections 19.1 and 28 to section 57-15-06.7, subsection 25.1 to section 57-15-10, and subsection 5.1 to section 57-15-20.2 of the North Dakota Century Code, relating to tax levy references; to amend and reenact sections 2-03-14, 4-22-51, 4-25-04, 4-30-04, 4-30-07, 5-01-06, 6-09-27, 6-09.4-17, 7-07-02, 9-08-08, subsection 3 of section 10-15-38, subsection 2 of section 10-15-46, subsection 4 of section 10-15-52.4, subsection 1 of section 10-15-56, section 10-19-63, subsection 4 of section 10-22-14, section 10-24-37, subsection 4 of section 10-27-14, subsection 2 of section 11-15-07, sections 11-15-08, 11-18-14, subsection 2 of section 13-03-05, sections 14-02-06, 14-02-10, 14-07.1-06, 15-20.1-09, 15-20.4-13, subsections 2 and 5 of section 15-47-38, subsection 11 of section 15-47-38.1, subsection 1 of section 15-53.1-05.2, sections 15-60-08, 18-04-05, subdivision h of subsection 1 of section 19-03.1-36, section 21-06-10, subsection 4 of section 23-28-03, subsection 2 of section 23-28-04, subsection 2 of section 23-28-05, sections 25-02-01, 26.1-21-01, 27-08.1-01, 27-19-01, 27-19-04, 27-19-09, 27-19-12, 27-19-13, 28-01-05, 28-01-14, 28-01-15, 28-01-16, 28-01-17, 28-01-18, 28-01-19, 28-01-22, 28-01-22.1, 28-01-24, 28-01-25, 28-01-26, 28-01-26.1, 28-01-28, 28-01-30, 28-01-31, 28-01-32, 28-01-37, 28-01-42, subsection 2 of section 28-01.1-02, section 28-05-07, subsection 4 of section 28-14-06, sections 28-22-07, 28-24-02, 28-26-08, 28-26-24, subdivision a of subsection 1 of section 28-32-01, section 30.1-12-09, subsection 2 of section 32-08.1-03, sections 32-12.1-10, 32-13-05, 32-15-06, 32-17-04, 32-19-30, 32-20-02, 32-20-03, subsection 3 of section 32-22-27, subsection 4 of section 32-38-03, sections 32-39-03, 34-01-13, 34-06.1-05, 34-06.1-06, 34-08-09, 34-14-08, 35-18-01, 35-18-05, 35-18-11, 35-27-27, 36-04-12, 36-04-16, 36-22-08, 38-14.2-09, subsection 27 of section 39-01-01, section 39-12-11, subsection 3 of section 39-16-01, sections 39-16.1-01, 39-22.3-07, 40-05.1-13, 40-11-10, 40-49-17, subsection 1 of section 41-02-101, sections 41-02-104, 41-03-22, subsection 3 of section 41-03-68, subsection 2 of section 41-05-15, sections 43-23-10, 43-23.1-19, 43-23.2-05,

43-23.2-06, 43-31-06, subdivision c of subsection 1 of section 43-40-16, subsection 2 of section 47-16-17, sections 47-16-30, 48-02-15, 49-04.1-04, 51-07-09, subsection 3 of section 51-13-02.1, subsection 3 of section 51-18-05, section 51-21-04, subsection 3 of section 51-22-03, sections 52-04-12, 52-04-16, 54-18-12, 54-46-03, 54-46-11, 54-46.1-01, 54-46.1-02, 54-46.1-04, 54-46.1-05, 54-46.1-06, 57-15-06.6, 57-15-06.8, 57-15-22.2, 57-15-55.1, 57-16-07, 57-26-07, 57-30-02, 57-30-04, 57-38-35, 57-38-61, 57-39.2-23, 58-04-09, 58-14-01, 60-04-03.1, 60-04-05, 61-02-61, 61-02-68.11, 61-02-72, 61-24.4-09, 65-01-01, subsection 9 of section 65-01-02, sections 65-01-08 and 65-05-06 of the North Dakota Century Code, relating to improper, inaccurate, redundant, or obsolete references; and to repeal sections 14-02-11, 15-08-01.1, 25-10-04, 50-02-02, 54-27.1-10, 54-46-03.1, and subsection 13 of section 57-15-10 of the North Dakota Century Code, relating to discrimination, oil and gas bonus payments, state hospital administration, residency, reports, records management, and tax levies.

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

SECTION 1. AMENDMENT. Section 2-03-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-03-14. **Civil liability for injuries to guest passenger.** No person transported by the owner or operator of any aircraft as a guest without payment for such transportation ~~shall have a cause of action~~ has claim for relief for damages against the owner or operator for injury, death, or loss in case of accident, unless the accident ~~shall have been~~ was caused by the gross negligence, intoxication, or willful and wanton misconduct of the owner or operator of the aircraft, and unless the gross negligence, intoxication, or willful and wanton misconduct of the owner or operator of the aircraft contributed to the injury, death, or loss ~~for which the action is brought~~. No person so transported ~~shall have such cause of action~~ has claim for relief if he has willfully or by want of ordinary care brought the injury upon himself. For purposes of this section, the word "guest" means any person other than an employee of the owner or registrant of any aircraft, or of a person responsible for its operation with the owner's or registrant's express or implied consent, being in or upon, entering or leaving the same, except any passenger for hire and except any passenger while the aircraft is being used in the business of demonstrating or testing. The sharing of expense ~~shall~~ does not constitute a carriage for hire within the meaning of this section.

SECTION 2. AMENDMENT. Section 4-22-51 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-51. **Soil conservation trust lands.** The state of North Dakota hereby accepts and declares to be held in trust for the soil conservation districts of the state for use in carrying out the soil

conservation program those certain tracts or parcels of land lying and being in the county of Burleigh and state of North Dakota and more particularly described as follows:

Township one hundred thirty-eight north, range eighty west, fifth principal meridian: west one-half of section fifteen-
west one-half section sixteen- and that portion of the southeast quarter of section sixteen described as follows: beginning at the southeast corner of said section sixteen, thence running north on the east line of said section 660 feet; thence west parallel with the south line of said section 2310 feet; thence south 660 feet to a point on the south line of said section 2310 feet west of the southeast corner of said section; thence east along the south line of said section 2310 feet to the place of beginning; containing thirty-five acres, more or less.

Subject, however, to the following rights, easements, exceptions and reservations:

1. Easements for existing or established roads, highways and public utilities, if any.
2. Right reserved by the Department of the Army "to enter thereon and remove gravel and use the established rubbish disposal area as long as any part of Fort Lincoln Military Reservation is used by the Department of the Army".
3. Reservation to the United States of America and its assigns of an undivided three-fourths interest in all coal, oil, gas, and other minerals, including three-fourths of all sand, gravel, stone, clay and similar materials, in or under such property, together with the usual mining rights, powers, and privileges, including the right at any and all times, to enter upon the land and use such parts of the surface as may be necessary in prospecting for, mining, saving and removing said minerals or materials, provided that such quantities of sand, gravel, stone, clay and similar materials, as may be required, may be utilized in the operation or improvement of the said lands.

The said lands, having been conveyed to the state of North Dakota by the United States of America for use in carrying out the soil conservation program of the soil conservation districts of the state, are further subject to the condition that they shall be used for public purposes and if at any time cease to be so used shall revert to and become revested in the United States.

The control, custody, possession, supervision, management, and operation of the said trust lands is hereby vested in the North Dakota Association of Soil Conservation Districts for use in carrying out the soil conservation program of the soil conservation districts of the state and the said association in such control,

custody, possession, supervision, management, and operation shall hold all accumulations of personal property or surplus funds derived from said lands in trust for the soil conservation districts of the state for use in carrying out the soil conservation program.

SECTION 3. AMENDMENT. Section 4-25-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-25-04. Repurchase contracts - Bonding requirement for nonresident seed dealers. Any nonresident person or his agent shall pay an annual license fee of twenty-five dollars to the state seed commissioner before engaging in the business of selling any agricultural grain or grass seed or entering into any contract with a purchaser whereby he agrees to purchase or retains an option to purchase the grain or grass seed or feed grain produced. ~~Such~~ The license shall be is renewable annually on January 1 first of each year. In addition, at the time of making application for such license, the applicant shall furnish a corporate surety bond to be approved by the commissioner in the penal sum of ten thousand dollars running to the state of North Dakota for the use and benefit of any such purchaser of seed or seller under a repurchase contract or option, who may have a ~~cause of action~~ claim for relief against any seller or repurchaser who fails to comply with the terms of the purchase or repurchase contract. All fees collected under this section shall be disposed of in the manner provided in section 4-09-20.

SECTION 4. AMENDMENT. Section 4-30-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-04. Department to become trustee upon default in required security. If any licensee defaults in the provisions of any required security, the licensee ~~shall be is~~ deemed to be insolvent within the meaning of this chapter. The ~~cause of action~~ claim for relief for damages upon any required security, and the amount recovered in any ~~cause of~~ action for the conversion of milk, or milk products, as the case may be, purchased by the licensee while the license is in force and effect, and the assets of the licensee not made subject to any claim in federal bankruptcy by any secured or general creditor within four months of the appointment of the department as trustee under this chapter, ~~shall~~ constitute a trust fund in the hands of the department for all persons having a ~~cause of action~~ claim for relief against the licensee on the required security.

SECTION 5. AMENDMENT. Section 4-30-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-07. Remedy of claimants - Separate action by claimant permissible. No claimant ~~shall have~~ has a separate ~~cause of action~~ claim for relief against any licensee's required security unless the department fails or refuses to apply for its own appointment as trustee as provided in this chapter. Any claimant, either independently or in conjunction with other claimants, may pursue

concurrently with the department any other remedy which the claimant or claimants may have against the licensee, or against the property of the licensee, for the whole of their claim or claims or for any deficiency which occurs after payments have been made from the trust fund.

SECTION 6. AMENDMENT. Section 5-01-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-06. Recovery of damages resulting from intoxication. Every spouse, child, parent, guardian, employer, or other person who is injured by any intoxicated person, or in consequence of intoxication, ~~shall have~~ has a right of action claim for relief against any person who caused such intoxication by disposing, selling, bartering, or giving away alcoholic beverages contrary to statute for all damages sustained, and in the event death ensues, the survivors of the decedent are entitled to ~~such~~ damages as defined in section 32-21-02.

SECTION 7. AMENDMENT. Section 6-09-27 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-27. Civil actions on Bank transactions - Name of parties - Service - Venue. Civil actions may be brought against the state of North Dakota on account of ~~causes of action claims for relief~~ claimed to have arisen out of transactions connected with the operation of the Bank of North Dakota upon condition that the provisions of this section are complied with. In such actions, the state shall be designated as "The State of North Dakota, doing business as The Bank of North Dakota", and the service of process ~~therein~~ shall be made upon the president of the Bank. The actions may be brought in the same manner and ~~shall be~~ are subject to the same provisions of law as other civil actions. The action shall be brought, however, in the county where the Bank of North Dakota ~~shall have~~ has its principal place of business, except as provided in sections 28-04-01, 28-04-02, 28-04-03, 28-04-04, and 28-04-06.

SECTION 8. AMENDMENT. Section 6-09.4-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-17. Exemption of property from execution sale. All property of the bond bank ~~shall be~~ is exempt from levy and sale by virtue of an execution and no execution or other judicial process ~~shall~~ may issue against the same nor ~~shall~~ may any judgment against the bond bank be a charge or lien upon its property; provided that nothing contained in this chapter ~~shall apply~~ applies to or ~~limit~~ limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the bank on its revenues or other moneys. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds or notes by the bond bank under this chapter or to obtain any relief upon the ground that such resolution is invalid must be commenced within ten days after

the adoption of said resolution by the bond bank. After the expiration of such period of limitation, no ~~right of action claim for relief~~ or defense founded upon the invalidity of ~~such the~~ resolution or any of its provisions ~~shall~~ may be asserted nor ~~shall~~ may the validity of ~~such the~~ resolution or any of its provisions be open to question in any court on any ground whatever.

SECTION 9. AMENDMENT. Section 7-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7-07-02. Instruments to be filed. Any foreign corporation as defined in this title, before doing business within this state, shall file in the office of the secretary of state and in the office of the ~~state examiner commissioner of banking and financial institutions~~ a duly authenticated copy of its charter, articles of incorporation, or articles of agreement, a copy of its bylaws and other rules and regulations showing the method of conducting its business, and also a statement verified by oath of the president and secretary of such corporation, or by oath of its managing officials if it is other than a corporation, showing:

1. The name of ~~such the~~ corporation and the location of its principal office or place of business without this state, and the location of the place of business or principal office within this state;
2. The names and residences of the officers, trustees, or directors;
3. The amount of paid-in capital stock or outstanding shares;
4. The amount invested in the state of North Dakota; and
5. The names, addresses, and the total cash credits of all of its stockholders, shareholders, investors, and customers who reside in the state of North Dakota.

A similar statement shall be filed annually thereafter as of December thirty-first with the ~~state examiner commissioner~~ within twenty days after December thirty-first of each year.

~~Such The~~ corporation shall file, at the same time and in the same offices, a certificate signed by its president, vice president, or other acting head, and its secretary, if there is one, certifying: that the ~~said~~ corporation has consented to all the license laws and other laws of the state of North Dakota relative to foreign corporations; that it has consented to be sued in the courts in this state upon all ~~causes of action claims for relief~~ arising against it in this state; that service of process in any action or proceeding brought against it may be made upon the secretary of state of North Dakota; and that ~~such~~ service of process, when so made upon the secretary of state, ~~shall be is~~ valid service on the corporation.

SECTION 10. AMENDMENT. Section 9-08-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9-08-08. Settlement of damages for personal injuries voidable. Every settlement or adjustment of any cause of action claim for relief for damages on account of any personal injuries received, whether death ensues or not to the person injured, and every contract of retainer or employment to prosecute such an action, ~~shall be~~ is voidable if made within thirty days after such the injury or if made while the person so injured is under disability from the effect of the injury so received and within six months after the date of the injury.

SECTION 11. AMENDMENT. Subsection 3 of section 10-15-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. No amendment may affect any existing cause of action claim for relief or proceedings to which the cooperative is a party, or existing rights of persons other than members or stockholders.

SECTION 12. AMENDMENT. Subsection 2 of section 10-15-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the cooperative cures its defaults other than those under subdivisions b and c of subsection 1 prior to the entry of the court's final decree and pays all penalties and court costs that have accrued, the cause of action claim for relief with respect to the defaults so cured will abate.

SECTION 13. AMENDMENT. Subsection 4 of section 10-15-52.4 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. That the cooperative 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 cause of action claim for relief arising in this state during the time the cooperative was authorized to transact business in this state may thereafter be made on such cooperative by service thereof on the secretary of state.

SECTION 14. AMENDMENT. Subsection 1 of section 10-15-56 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No action may be instituted or maintained in the right of any association by a member or stockholder unless he:
 - a. Alleges in his complaint that he was a member or registered stockholder when any part of the

transaction of which he complains took place, or that his stock thereafter devolved upon him by operation of law from a stockholder at such time.

- b. Alleges in his complaint with particularity his efforts to secure from the board such action as he desires. He shall allege further that he has either informed the association or board in writing of the ultimate facts of each cause of action claim for relief against each director or that he has delivered to the association or board a copy of the complaint which he proposes to file. He shall state the reasons for his failure to obtain such action or the reasons for not making such effort.

SECTION 15. AMENDMENT. Section 10-19-63 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-19-63. Effect of certificate of amendment. Upon the issuance of the certificate of amendment by the secretary of state, the amendment ~~shall become~~ becomes effective and the articles of incorporation ~~shall be~~ are deemed to be amended accordingly.

~~No~~ An amendment ~~shall does not~~ affect any existing cause of action claim for relief in favor of or against such corporation, or any pending suit to which such corporation ~~shall be~~ is a party, or the existing rights of persons other than shareholders. ~~In the event~~ If the corporate name ~~shall be~~ is changed by amendment, no suit brought by or against such corporation under its former name ~~shall abate~~ may be abated for that reason.

* SECTION 16. AMENDMENT. Subsection 4 of section 10-22-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 cause of action 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 corporation by service thereof on the secretary of state.

SECTION 17. AMENDMENT. Section 10-24-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-37. Effect of certificate of amendment. Upon the issuance of the certificate of amendment by the secretary of state, the amendment ~~shall become~~ becomes effective and the articles of incorporation ~~shall be~~ are deemed to be amended accordingly.

~~No~~ An amendment ~~shall does not~~ affect any existing cause of action claim for relief in favor of or against such corporation, or

- * NOTE: Section 10-22-14 was also amended by section 13 of Senate Bill No. 2107, chapter 148.

any pending action to which such corporation ~~shall be~~ is a party, or the existing rights of persons other than members. ~~in the event~~ if the corporate name ~~shall be~~ is changed by amendment, no action brought by or against such corporation under its former name ~~shall abate~~ may be abated for that reason.

SECTION 18. AMENDMENT. Subsection 4 of section 10-27-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 ~~cause of action~~ 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 ~~such~~ the corporation by service thereof on the secretary of state.

SECTION 19. AMENDMENT. Subsection 2 of section 11-15-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. For serving a summons, ~~warrant writ~~ writ of attachment, order of replevin, injunctional order, citation, and other mesne process and making a return thereon, a total of seven dollars and fifty cents for each person served at different locations.

*** SECTION 20. AMENDMENT.** Section 11-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-08. Sheriff's commissions. Except as otherwise provided in section 11-15-09, the sheriff ~~shall be~~ is entitled to receive commissions on all moneys received and disbursed by him on an execution, order of sale, order of attachment, or decree for the sale of real or personal property, as follows:

1. On the first four hundred dollars, three percent.
2. On all moneys in excess of four hundred dollars and not exceeding one thousand dollars, two percent.
3. On all moneys in excess of one thousand dollars, one percent.

In all cases where personal property ~~shall be~~ is taken by the sheriff on an execution or under a ~~warrant writ~~ writ of attachment and applied in satisfaction of the debt without sale, he ~~shall be~~ is entitled to receive the percentage specified in this section based upon the appraised value of the property.

**** SECTION 21. AMENDMENT.** Section 11-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 11-15-08 was also amended by section 1 of House Bill No. 1438, chapter 162.

** NOTE: Section 11-18-14 was also amended by section 1 of Senate Bill No. 2292, chapter 384.

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 his office, and destroy, all seed liens, labor liens, stallion liens, chattel mortgages, threshing liens, crop production liens, combining liens, mechanic's liens, repairman's liens, and sales contracts together with any releases for the same upon which a cause of action claim for relief has accrued and which cause of action claim for relief is more than ten years old. At the time of destroying said 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 22. AMENDMENT. Subsection 2 of section 13-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commissioner may issue a license to operate a small loans business if he shall find the commissioner finds:
 - a. That the financial responsibility, experience, character, and general fitness of the applicant, are such as to warrant the belief that the business will be operated lawfully, and fairly; and
 - b. That the application has net liquid assets of at least ten thousand dollars for the operation of the business; and
 - c. That the applicant shall have has filed with the commissioner a bond to be approved by him the commissioner in which the applicant shall be is the obligor, in the sum of ten thousand dollars, with one or more sureties whose liability as such sureties need not exceed the said sum in the aggregate. This bond shall must run to the commissioner for the use of the state and of any person or persons who may have a cause of action claim for relief against the obligor of said the bond under the provisions of this chapter. Such The bond shall be conditioned that said the obligor will faithfully conform to and abide by the provisions of this chapter and of all the rules and regulations lawfully made by the commissioner hereafter, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such the person or persons from said the obligor under and by virtue of the provisions of this chapter.

SECTION 23. AMENDMENT. Section 14-02-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02-06. Offenses against personal relation. All civil ~~causes of action claims for relief~~ for breach of promise to marry, alienation of affection, criminal conversation, and seduction are abolished. A ~~cause of action claim for relief~~ brought before July 1, 1983, under this section, is valid until final judgment is rendered.

SECTION 24. AMENDMENT. Section 14-02-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02-10. Uniform Single Publication Act. No person ~~shall~~ may have more than one ~~cause of action claim for relief~~ for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action ~~shall~~ must include all damages for any such tort suffered by the plaintiff in all jurisdictions.

A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in this section ~~shall bar bars~~ any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance.

This section may be cited as the Uniform Single Publication Act.

This section is not retroactive to ~~causes of action claims for relief~~ existing on July 1, 1953.

SECTION 25. AMENDMENT. Section 14-07.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-06. Penalty for violation of a protection order - Arrest without warrant. Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order ~~shall be is~~ a class A misdemeanor and also ~~constitute constitutes~~ criminal contempt of court subject to penalties therefor. A peace officer may arrest any person without a warrant if:

1. The person has committed the offense of violating a protection order, whether or not the violation was committed in the presence of the officer; or
2. The ~~person, if~~ the peace officer has probable cause to believe the person within the preceding four hours, has assaulted ~~his or her~~ that person's spouse, other family member, former spouse, or any person with whom the person

resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

~~No~~ A peace officer ~~shall~~ may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

SECTION 26. AMENDMENT. Section 15-20.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-20.1-09. Board membership - Powers and duties. The school board of a vocational school district ~~shall~~ must consist of not to exceed seven members, elected from geographical districts which shall be as nearly equal in population as is practicable at the same time and for the same terms as are other county officials. ~~The board of county commissioners shall determine the boundaries of the geographical districts shall be determined by the board of county commissioners or, in.~~ In the case of several counties combining to form a district, by the boards of county commissioners sitting jointly shall determine the boundaries of the geographical districts. The board or boards of county commissioners, as the case may be, shall also appoint the members of the original school board who shall serve until the next regular election of county officials. ~~The provisions of section Section 15-28-02 shall does~~ not apply to a school board elected or appointed in accordance with this section. Such school board shall be governed by this title and shall possess all of the powers granted to a public school board by section 15-29-08 or any other provision of law, insofar as such powers are consistent with the provisions of this section and sections 15-20.1-08 through 15-20.1-10 and 15-20.1-11.

SECTION 27. AMENDMENT. Section 15-20.4-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-20.4-13. Jurisdiction of courts - Service of process. Any postsecondary educational institution not exempt from ~~the provisions of~~ this chapter, whether or not a resident of or having a place of business in this state, which instructs or educates, or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract, to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of this state, or which offers to award or awards any educational credentials to a resident of this state, submits such institution, and if a natural person his personal representative, to the jurisdiction of the courts of this state, concerning any cause of action claim for relief arising therefrom, and for the purpose of enforcement of this chapter by injunction pursuant to section 15-20.4-14. Service of process upon

any such institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside this state, in the manner prescribed by the North Dakota Rules of Civil Procedure, with the same force and effect as if the summons had been personally served within this state. Nothing contained in this section ~~shall limit~~ limits or ~~effect~~ affects the right to serve any process as prescribed by the North Dakota Rules of Civil Procedure.

* SECTION 28. AMENDMENT. Subsections 2 and 5 of section 15-47-38 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read 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 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 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 teacher has informed the board in writing at least two days prior thereto that he will contest the charges brought against him, 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 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~~ 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 own choosing; and the teacher's spouse, or one other family member of

* NOTE: Section 15-47-38 was also amended by section 3 of Senate Bill No. 2279, chapter 229.

the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the school district clerk, and 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 shall be granted a continuance of not to exceed seven days by the board unless for good cause otherwise shown. No cause of action claim for relief 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.

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 shall be informed in writing of the time, which shall 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 shall 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 two written evaluations are prepared for every teacher employed by the district during each school year. These written performance reviews shall be completed and made available to the teacher no later than December fifteenth for the first review and February twenty-eighth for the second review each year. The reasons given by the board for not renewing a teacher's contract shall must be sufficient to justify the contemplated action of the board and shall may not be frivolous or arbitrary but shall 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. 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. If the board finds that the reasons have not been substantiated, the nonrenewal proceedings will be dismissed. The meeting shall must be an executive session of the board unless both the school board and the teacher shall agree that it

~~shall is~~ to be open to other persons or the public. The teacher may be represented at the meeting by any two representatives of his 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 school district clerk, and 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 shall be granted a continuance of not to exceed seven days. ~~No cause of action claim for relief~~ for libel or slander ~~shall lie~~ 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 shall be final and binding on all parties. Final notice of the determination not to renew a contract shall be given in writing by May first as provided in section 15-47-27.

SECTION 29. AMENDMENT. Subsection 11 of section 15-47-38.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. No ~~cause of action claim for relief~~ for libel or slander shall ~~accrue~~ accrues from any statement expressed either orally or in writing at an executive session of the school board held for the purposes provided for in this section.

* SECTION 30. AMENDMENT. Subsection 1 of section 15-53.1-05.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If a county committee receives an annexation petition made under section 15-53.1-05 which involves the transfer of territory accounting for ten percent or more of a school district's ~~net assessed property taxable~~ valuation, the county committee shall submit the petition directly to the state board without first taking action on the petition. The state board shall then make the sole determination of whether the proposed annexation described in the petition would cause the district which would lose the territory to be unable to levy sufficient taxes to carry on normal school operations.

SECTION 31. AMENDMENT. Section 15-60-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-60-08. Competition in award of contracts. If any project or any portion thereof, or any improvement thereof, ~~shall be~~ is constructed pursuant to a contract, and the estimated cost thereof exceeds five hundred dollars, ~~such~~ the contract shall be awarded to the lowest responsible bidder after advertisement for bids once a week for three weeks in at least one newspaper of general circulation in the

* NOTE: Section 15-53.1-05.2 was repealed by section 9 of Senate Bill No. 2065, chapter 209.

county where the project or improvement is located. The board may make rules and regulations for the submission of bids and the construction or improvement of any project or portion thereof. No contract shall may be entered into for construction or improvement of any project or portion thereof, or for the purchase of materials, unless the contractor shall give gives an undertaking with a sufficient surety or sureties approved by the board, and in an amount fixed by the board, for the faithful performance of the contract. All construction contracts shall must provide, among other things, that the person or corporation entering into such contract with the board will pay for all materials furnished and services rendered, for the performance of the contract, and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action claim for relief accrued. Nothing in this This section shall be construed to does not limit the power of the board to construct any project or portion thereof of any addition, betterment, or extension thereto, directly by the officers, agents, and employees of the board, or otherwise than by contract. Subject to the aforesaid, the board may, but without intending by this provision to limit any powers of such board, enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials and other related matters in connection with any project or portion thereof as the board may deem desirable, or as may be requested by any federal agency that may assist in the financing of such project or any part thereof.

* SECTION 32. AMENDMENT. Section 18-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-04-05. Amount due cities, rural fire protection districts, or rural fire departments - Certificate of commissioner of insurance to office of management and budget --Appropriation. The commissioner of insurance shall compute the amounts due to the several cities, townships, certified rural fire departments, or fire protection districts entitled to benefits under this chapter, and shall certify such amounts for payment to the office of management and budget on or before June first of each year, in the following manner:

1. To cities not within the boundaries of a fire protection district, a sum equal to two and one-fourth percent of the premiums received by insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property in such cities.
2. To each city fire department performing service outside of its incorporated limits, the sum of one hundred dollars.

* NOTE: Section 18-04-05 was also amended by section 1 of Senate Bill No. 2104, chapter 253.

3. To each rural fire department not certified by the state fire marshal, the sum of two hundred dollars per year.
4. To each rural fire protection district organized within the provisions of this title or rural fire department certified by the state fire marshal, two hundred dollars plus a sum equal to two and one-fourth percent of the premiums, excluding crop hail insurance premiums received by insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property within the boundaries of such rural fire protection districts or property served by certified rural fire departments.

There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated as a standing and continuing appropriation, such sums as may be necessary to make payments as provided in this section. The amount distributed by the commissioner of insurance pursuant to this section shall may not exceed the amount of the biennial appropriation made by the legislative assembly. Payments by the commissioner of insurance in any fiscal year shall may not exceed one-half of the biennial appropriation made by the legislative assembly. If the appropriation is less than the amount determined by applying the formula pursuant to this section, ~~proration shall be made by the commissioner of insurance that provides by proration shall provide~~ each eligible recipient the same proportion of the appropriation as the percent of the total funds it would have received pursuant to such formula.

SECTION 33. AMENDMENT. Subdivision h of subsection 1 of section 19-03.1-36 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- h. All money, coin, currency, and everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, and all proceeds traceable to any violation of this chapter. The property described in this ~~section~~ subdivision shall be forfeited in the same manner and procedure as conveyances.

* SECTION 34. AMENDMENT. Section 21-06-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-06-10. Moneys received through leasing of lands acquired by United States for flood control distributed to counties for schools and roads. The state treasurer shall pay the funds so received, as in said under Public Law 79-526 [60 Stat. 642; 33 U.S.C. 701c-3] set forth, by any county in this state, the treasurer of the state of North Dakota shall pay over to the county or counties entitled thereto as in said public law set forth. The first one-half One-half of such the funds

* NOTE: Section 21-06-10 was also amended by section 1 of House Bill No. 1484, chapter 283.

shall be distributed to the school districts which have lost land subject to taxation by reason of the acquisition of lands by the United States on the basis of the proportionate amount of such lands acquired by the United States. If all of the land in any ~~such~~ district ~~shall have~~ has been acquired by the United States, the share of ~~such~~ the funds assignable to ~~such~~ the district shall be paid into, and disbursed in the manner provided by law for, the county tuition fund. ~~The next quarter~~ One-fourth of ~~such~~ the funds shall be paid to such counties for road purposes to be expended as the county commissioners ~~shall~~ determine. ~~The final quarter~~ One-fourth of ~~such~~ the funds shall be distributed to the organized townships, if any, within each county for road purposes to be expended as the township supervisors ~~shall~~ determine. This amount shall be allocated among the various organized townships on the basis of the proportionate true and full valuation, including property valued pursuant to section 57-02-14, of ~~such~~ the property within that county. If any area of a county does not lie within an organized township but creates an impact whereby ~~such~~ the land is only assessable through an organized township, such funds shall be allocated to that township. If any area of a county does not lie within an organized township, a portion of the final quarter of such funds ~~shall~~ must be allocated to the county on the basis of the proportionate true and full valuation, including property valued pursuant to section 57-02-14, of ~~such~~ the property within that county. This section ~~shall apply~~ applies to all funds heretofore received or to be received by the counties entitled thereto.

SECTION 35. AMENDMENT. Subsection 4 of section 23-28-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A ~~cause of action~~ claim for relief against a law enforcement officer does not arise from ~~his~~ the officer making a reasonable search of the disabled person to locate an identifying device or identification card, even though the person is not wearing an identifying device or carrying an identification card.

SECTION 36. AMENDMENT. Subsection 2 of section 23-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A ~~cause of action~~ claim for relief against a medical practitioner does not arise from ~~his~~ the practitioner making a reasonable search of a disabled person to locate an identifying device or identification card, even though the person is not wearing an identifying device or carrying an identification card.

SECTION 37. AMENDMENT. Subsection 2 of section 23-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A cause of action claim for relief does not arise from a reasonable search to locate an identifying device or identification card as authorized by subsection 1.

SECTION 38. AMENDMENT. Section 25-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-01. State hospital for the mentally ill - Location - Title - Administration and control. An institution for the care of the mentally ill shall be maintained at the city of Jamestown and shall be known as the state hospital. The department of human services shall administer and control the state hospital.

SECTION 39. AMENDMENT. Section 26.1-21-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-21-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Blanket bond" means a bond which covers collectively all public employees and public officials without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund.
2. "~~Commissioner~~" means the commissioner of insurance.
- 3- "Fund" means the state bonding fund.
- 4- 3. "Political subdivision" means a county, city, township, school district or park district, or any other unit of local government.
- 5- 4. "Public employee" means and includes any and all persons person employed by the state or any of its political subdivisions, officers and employees an officer or employee eligible under section 57-15-56, and employees an employee under section 61-16.1-05 except for persons. "Public employee" does not include a person employed by the an occupational and professional boards and commissions board or commission under title 43, and or by the state bar association.
- 6- 5. "Public official" means any officer or deputy, either elected or appointed, of the state or any of its political subdivisions who is required to be bonded by any law of this state, except for officers an officer of the an occupational and professional boards and commissions board or commission under title 43, and or of the state bar association.

7- 6. "State" means state departments, agencies, industries, and institutions.

* SECTION 40. AMENDMENT. Section 27-08.1-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-01. Small claims court - Jurisdictional limits - Effective date.

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 ~~shall be~~ 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 one thousand five hundred dollars. The proceedings in this court shall be commenced in the county of the defendant's residence, if the defendant is a natural person. If the defendant is a corporation or a partnership, the proceedings shall be commenced in any county in which the defendant has a place of business or in any county in which the subject matter of the claim arose. No claim ~~shall may~~ may be filed by an assignee of that claim. No garnishment or attachment ~~shall may~~ may issue from this court. Actions commenceable in the small claims court ~~shall are~~ are only be those in which the cause of action claim for relief has accrued on or after January 1, 1971.

SECTION 41. AMENDMENT. Section 27-19-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-19-01. Assumption of jurisdiction. In accordance with the

provisions of Public Law ~~280 of the 83rd Congress~~ 83-280 and section ~~203~~ 1 of article XI of the Constitution of North Dakota ~~constitution~~, jurisdiction of the state of North Dakota shall be extended over all civil causes of action claims for relief which arise on an Indian reservation upon acceptance by Indian citizens in a manner provided by this chapter. Upon acceptance the jurisdiction of the state ~~shall be~~ is to the same extent that the state has jurisdiction over other civil causes of action claims for relief, and those civil laws of this state that are of general application to private property ~~shall~~ have the same force and effect within such Indian reservation or Indian country as they have elsewhere within this state.

SECTION 42. AMENDMENT. Section 27-19-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-19-04. Effective date. The provisions of this ~~This~~ chapter

~~shall affect~~ affects only those causes of action claims for relief which arise after the effective date of state jurisdiction as provided in section 27-19-03.

SECTION 43. AMENDMENT. Section 27-19-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 27-08.1-01 was also amended by section 1 of House Bill No. 1588, chapter 340.

27-19-09. Tribal ordinances and customs preserved. Any tribal ordinance or custom heretofore or hereafter adopted by any Indian tribe, band, or community, in the exercise of any authority which it may possess shall, if not inconsistent with the applicable civil law of this state, be given full force and effect in the determination of civil causes of action claims for relief pursuant to this section.

SECTION 44. AMENDMENT. Section 27-19-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-19-12. Withdrawal proclamation. Upon the filing of a petition for withdrawal from the civil jurisdiction of the state, the executive director of the North Dakota Indian affairs commission after substantiating that the provisions of section 27-19-11 have been complied with shall certify such withdrawal to the governor. Upon such certification the governor shall, within ten days, issue a proclamation proclaiming that thirty days from the date of the issuance of such proclamation the civil jurisdiction of the state shall be terminated except as to those causes of action claims for relief which arose prior to the effective date of such termination or to those contractual obligations which were incurred prior to the effective date of such termination of state civil jurisdiction.

SECTION 45. AMENDMENT. Section 27-19-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-19-13. Individual withdrawal. An individual who has accepted state civil jurisdiction under the provisions of section 27-19-05 may withdraw upon filing with the county auditor a statement declaring his withdrawal. ~~Such withdrawal shall~~ Withdrawal does not affect causes of action claims for relief which arose prior to ~~such the~~ withdrawal or contractual obligations which were incurred prior to ~~such the~~ withdrawal.

SECTION 46. AMENDMENT. Section 28-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-05. Actions founded upon title to real estate or to rents or services therefrom - Limitations. No cause of action claim for relief, or defense, or counterclaim to an action founded upon the title to real property, or to rents or service out of the same, ~~shall be is~~ is effectual unless it appears that the person prosecuting the action or interposing the defense or counterclaim, or under whose title the action is prosecuted or the defense or counterclaim is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within twenty years before the committing of the act in respect to which such action is prosecuted or such defense or counterclaim is made.

SECTION 47. AMENDMENT. Section 28-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-14. **Disabilities extend limitations on actions affecting real estate.** If a person who is entitled to maintain any of the actions affecting real estate mentioned in this chapter, or entitled to interpose a defense or counterclaim to such an action, or entitled to make an entry upon real property is:

1. Under the age of eighteen years;
2. Insane; or
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense for a term less than for life,

at the time his title first descends or his ~~cause of action claim~~ claim for relief or right of entry first accrues, or when such defense or counterclaim might be interposed, the time of such disability is not a part of the time in this chapter limited for the commencement of such action, or the making of such entry, or the interposing of such defense or counterclaim. However, the time so limited cannot be extended more than ten years after the disability ceases or after the death of the person so disabled.

SECTION 48. AMENDMENT. Section 28-01-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-15. **Actions having ~~ten years~~ ten-year limitations.** The following actions must be commenced within ten years after the ~~cause of action~~ claim for relief has accrued:

1. An action upon a judgment or decree of any court of the United States or of any state or territory within the United States;
2. An action upon a contract contained in any conveyance or mortgage of or instrument affecting the title to real property except a covenant of warranty, an action upon which must be commenced within ten years after the final decision against the title of the covenantor; and
3. Any action or proceeding for the foreclosure of a mortgage upon real estate.

SECTION 49. AMENDMENT. Section 28-01-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-16. **Actions having six-year limitations.** The following actions must be commenced within six years after the ~~cause of action~~ claim for relief has accrued:

1. An action upon a contract, obligation, or liability, express or implied, subject to the provisions of sections 28-01-15 and 41-02-104.

2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.
3. An action for trespass upon real property.
4. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.
5. An action for criminal conversation or for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided.
6. An action for relief on the ground of fraud in all cases both at law and in equity, the cause of action claim for relief in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

SECTION 50. AMENDMENT. Section 28-01-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-17. Actions having three-year limitations - Exceptions. The following actions must be commenced within three years after the cause of action claim for relief has accrued:

1. An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. However, this subsection ~~shall~~ does not apply to an action for an escape.
2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.
3. An action for the foreclosure of a mechanic's lien.

SECTION 51. AMENDMENT. Section 28-01-18 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-18. Actions having two-year limitations. The following actions must be commenced within two years after the cause of action claim for relief has accrued:

1. An action for libel, slander, assault, battery, or false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the state.
3. An action for the recovery of damages resulting from malpractice; provided, however, that the limitation of an action against a physician or licensed hospital will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or licensed hospital. This limitation ~~shall~~ be is subject to the provisions of section 28-01-25.
4. An action for injuries done to the person of another, when death ensues from such injuries, and the cause of action claim for relief shall be deemed to have accrued at the time of the death of the party injured; provided, however, that when death ensues as the result of malpractice, the cause of action shall be claim for relief is deemed to have accrued at the time of the discovery of the malpractice. However, the limitation will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or hospital.
5. An action for recovery of damages arising under chapter 5-01, and the cause of action shall be claim for relief is deemed to have accrued at the time of the alleged offense. This limitation ~~shall~~ does not apply to any cause of action claim for relief existing at the time of the enactment of this subsection.

SECTION 52. AMENDMENT. Section 28-01-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-19. Actions having one-year limitations. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process must be commenced within one year after the cause of action claim for relief has accrued.

SECTION 53. AMENDMENT. Section 28-01-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-22. Limitations on actions not specifically provided for. An action for relief not otherwise provided for must be commenced within ten years after the cause of action shall have claim for relief has accrued.

SECTION 54. AMENDMENT. Section 28-01-22.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-22.1. Actions against state - Limitation. When not otherwise specifically provided by law, an action against the state or its

employees and officials acting within the scope of their employment or office must be commenced within six years after the cause of action claim for relief has accrued. This may not be construed as a waiver of immunity.

SECTION 55. AMENDMENT. Section 28-01-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-24. Limitations on claims for relief fraudulently concealed. When, by fraud or fraudulent concealment, a party against whom a cause of action claim for relief exists prevents the person in whose favor such cause of action claim for relief exists from obtaining knowledge thereof, the latter may commence an action within one year from the time the cause of action claim for relief is discovered by him or might have been discovered by him in the exercise of diligence. Such fraud or fraudulent concealment must be established to the satisfaction of the court or jury, as the case may be, by a fair preponderance of the evidence.

SECTION 56. AMENDMENT. Section 28-01-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-25. Disabilities extend limitations on actions generally - Exceptions. If a person who is entitled to bring an action other than for the recovery of real property, or for a penalty or forfeiture, or against a sheriff or other officer for an escape is:

1. Under the age of eighteen years;
2. Insane; or
3. Imprisoned on a criminal charge or in execution under the sentence of a criminal court for a term less than for life,

at the time the cause of action claim for relief accrues, the time of such disability is not a part of the time limited for the commencement of the action. However, the period within which the action must be brought cannot be extended more than five years by any such disability except infancy, nor can it be extended in any case longer than one year after the disability ceases. In cases alleging professional malpractice, the extension of the limitation due to infancy is limited to twelve years.

SECTION 57. AMENDMENT. Section 28-01-26 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-26. Limitation in case of death. If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action claim for relief survives, an action may be commenced by his representatives after the expiration of that time and within one year from his death. If

a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action claim for relief survives and is not one based upon a claim which may be filed proceeding under title 30.1, an action may be commenced against his personal representative after the expiration of that time and within one year after the issuing of letters.

SECTION 58. AMENDMENT. Section 28-01-26.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-26.1. Survival of causes of action claims for relief. No action or cause of action claim for relief, except for breach of promise, alienation of affections, libel and slander, ~~shall abate~~ abates by the death of a party or of a person who might have been a party had such death not occurred.

SECTION 59. AMENDMENT. Section 28-01-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-28. Limitation when judgment reversed. If an action is commenced within the time prescribed therefor and the judgment therein is reversed on appeal, the plaintiff, or, if he dies and the cause of action claim for relief survives, his heirs or representatives, may commence a new action within one year after the reversal.

SECTION 60. AMENDMENT. Section 28-01-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-30. When limitation for disability available. No person can avail himself of a disability, unless it existed when his ~~right of action~~ claim for relief accrued.

SECTION 61. AMENDMENT. Section 28-01-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-31. Limitation for coexisting disabilities. When two or more disabilities coexist at the time the ~~right of action claim for relief~~ claim for relief accrues, the limitation does not attach until they are all removed.

SECTION 62. AMENDMENT. Section 28-01-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-32. Absence from state tolls limitations - Exception. If any person ~~shall be is~~ out of this state at the time a cause of action claim for relief accrues against him, an action on such cause of action claim for relief may be commenced in this state at any time within the term limited in this chapter for the bringing of an action on such cause of action claim for relief after the return of such person into this state. If any person ~~shall depart~~ departs from and ~~reside~~ resides out of this state and ~~remain~~ remains

continuously absent therefrom for the space of one year or more after a cause of action shall have claim for relief has accrued against him, the time of his absence shall may not be taken as any part of the time limited for the commencement of an action on such cause of action claim for relief. The provisions of this section, however, shall do not apply to the foreclosure of real estate mortgages by action or otherwise.

SECTION 63. AMENDMENT. Section 28-01-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-37. When cause of action claim for relief upon open account accrues. In an action brought to recover a balance due upon a mutual open, and current account, when there have been reciprocal demands between the parties, the cause of action shall be claim for relief is deemed to have accrued from the time of the last item proved in the account on either side.

SECTION 64. AMENDMENT. Section 28-01-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-42. Cancellation or enforcement of contract for sale of real estate - Limitation - When time begins to run - Commencement of proceedings. No action or proceeding shall may be maintained by a person out of possession to cancel or enforce any contract for the sale or conveyance of real estate, after twenty years from the date of said contract, as shown by the record of such instrument, or after twenty years from the date of recording of any instrument which describes or refers to such contract, which itself is not of record, unless the record of such contract or other instrument shows that less than ten years have elapsed since the due date of the last payment on the indebtedness or part thereof, secured thereby, or since the right of action claim for relief has accrued thereon, or unless the record shows an extension of the maturity of the instrument or of the debt or a part thereof, and that ten years from the expiration of the time of such extension has not yet expired. The limitation of this section shall may not be extended by the nonresidence of any plaintiff or defendant or of any vendor or vendee, nor by reason of any payment made after the due date of the last payment on the indebtedness or part thereof, nor by reason of any disability of any party interested in the contract.

* **SECTION 65. AMENDMENT.** Subsection 2 of section 28-01.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The provisions of this This section shall apply applies to all persons, regardless of minority or other legal disability, but shall does not apply to any cause of action claim for relief where the personal injury, death, or damage to property occurs within two years after July 1, 1979.

* **NOTE:** Section 28-01.1-02 was also amended by section 1 of House Bill No. 1510, chapter 344.

SECTION 66. AMENDMENT. Section 28-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-05-07. Lis pendens - Effect. In a civil action in a district court affecting the title to real property, the plaintiff, at the time of filing the complaint or at any time afterwards, or the defendant, when he sets up in his answer an affirmative cause of action claim for relief affecting the title to real property and demands substantive relief, at the time of filing his answer or at any time afterwards, may file for record with the register of deeds of each county in which the real property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property affected. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded ~~shall~~ be is deemed a subsequent purchaser or encumbrancer with notice and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section, an action ~~shall be~~ is deemed to be pending from the time of filing such notice but such notice ~~shall be~~ is of no avail unless it ~~shall be~~ is followed by the first publication of the summons, or by the personal service thereof on a defendant, within sixty days after such filing.

SECTION 67. AMENDMENT. Subsection 4 of section 28-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action claim for relief;

SECTION 68. AMENDMENT. Section 28-22-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-07. How exemptions claimed - Appraisal. All property claimed as exempt shall be selected by the debtor, his agent, or attorney. The value thereof, when material, shall be determined by an appraisal made under the direction of the sheriff or other officer. Whenever any debtor, against whom an execution, ~~warrant~~ writ of attachment, or other process has been issued, desires to avail himself of the benefit of section 28-22-03, such debtor, his agent, or attorney, shall make a schedule of all his personal property of every kind and character, including money on hand and debts due and owing to him, and shall deliver the same to the officer having the execution, ~~warrant~~ writ of attachment, or other process. The schedule shall be subscribed and sworn to by the debtor, his agent, or attorney, and any property owned by the debtor and not included in such schedule shall not be exempt. No claim for exemptions shall be disallowed for insufficiency as to form unless three days' notice in writing shall have been given first of the insufficiency by the party in interest claiming such insufficiency

to the person making the claim for exemptions, and specifying in apt language the defect complained of. The person claiming the exemption thereupon may amend the same to conform to the objections made within three days, if he desires so to do, by serving upon the proper person an amended claim for exemptions.

SECTION 69. AMENDMENT. Section 28-24-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-24-02. Payment on and period of redemption. The judgment debtor or redemptioner may redeem the property from the purchaser within one year (six months in redemptions under subsection 1 of section ~~32-10-1-04~~ 32-19.1-04) after the sale on paying the purchaser the amount of the purchase with interest at the rate provided in the original instrument on which the judgment is based, plus the amount of any insurance premiums, assessments, taxes, utilities, or other items paid by the purchaser in protection of the title or the premises, which the purchaser may have paid after the purchase, and interest at the same rate on that amount, and, if the purchaser is also a creditor having a lien superior to that of the redemptioner other than the judgment under which the purchase was made, the amount of that lien with interest.

SECTION 70. AMENDMENT. Section 28-26-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-26-08. Costs specially limited. In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, if the plaintiff recovers less than fifty dollars damages, he ~~shall~~ may recover no more costs and disbursements than damages. In an action to recover the possession of personal property, if the plaintiff recovers less than fifty dollars damages, he ~~shall~~ may recover no more costs and disbursements than damages, unless he recovers property also, the value of which with the damages amounts to fifty dollars, or the possession of property is adjudged to him, the value of which with the damages amounts to fifty dollars. Such value must be determined by the jury, court, or referee by whom the action is tried. When several actions ~~shall be~~ are brought on one bond, recognizance, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same ~~cause of action~~ claim for relief against several parties who might have been joined as defendants in the same action, no costs other than disbursements ~~shall~~ may be allowed to the plaintiff in more than one of such actions, which must be at his election, if the party or parties proceeded against in such action or actions, at the time of the commencement of the previous action or actions, ~~shall have~~ has been openly within this state and not secreted.

SECTION 71. AMENDMENT. Section 28-26-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-26-24. Liability for costs on judgment against assignee. In an action in which the cause of action claim for relief, by assignment after the commencement of the action or in any other manner, ~~shall become~~ becomes the property of a person not a party to the action, such person ~~shall be~~ is liable for the costs in the same manner as if he were a party.

SECTION 72. AMENDMENT. Subdivision a of subsection 1 of section 28-32-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 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 ~~and~~, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating 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.

SECTION 73. AMENDMENT. Section 30.1-12-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-12-09. (3-109) Statutes of limitation on decedent's cause of action claim for relief. No statute of limitation running on a cause of action claim for relief belonging to a decedent which had not been barred as of the date of his death ~~shall apply~~ applies to bar a cause of action claim for relief surviving the decedent's death sooner than four months after death. A cause of action claim for relief which, but for this section, would have been barred less than four months after death is barred after four months unless tolled.

SECTION 74. AMENDMENT. Subsection 2 of section 32-08.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In tort actions the affidavit ~~shall~~ must state that a cause of action claim for relief in tort exists in favor of the plaintiff and against the defendant, that the damages sustained exceed fifty dollars specifying the amount claimed and either:
 - a. The defendant is not a resident of this state; or that his residence is unknown and cannot with due diligence be ascertained; or
 - b. The defendant is a foreign corporation.

SECTION 75. AMENDMENT. Section 32-12.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-10. Statute of limitations. An action brought under this chapter must be commenced within three years after the cause of action claim for relief has accrued.

SECTION 76. AMENDMENT. Section 32-13-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-13-05. Complaint for usurping office - Arrest of defendant. The complaint in an action commenced against a person for usurping an office in addition to the statement of the cause of action claim for relief also may set forth the name of the person rightfully entitled to the office with a statement of his right thereto, and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office and by means of his usurpation thereof, an order may be granted by the judge of the court for the arrest of such defendant.

SECTION 77. AMENDMENT. Section 32-15-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-15-06. Entry for making surveys. In all cases when land is required for public use, the person or corporation, or his or its agents, in charge of such use may survey and locate the same, but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the provisions of section 32-15-21. Whoever may be is in charge of such public use may enter upon the land and make examinations, surveys, and maps thereof, and such entry shall constitute constitutes no cause of action claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

SECTION 78. AMENDMENT. Section 32-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-17-04. Complaint form - Description of property. In an action for the determination of adverse claims, the property must be described in the complaint with such certainty as to enable an officer upon execution to identify it. In other respects the complaint, exclusive of the venue, title, subscription, and verification, may be substantially in the following form, the blanks being properly filled:

The plaintiff for cause of action claim for relief shows to the court that he has an estate or interest in, or a lien or encumbrance upon, as the case may be, the following described real property, situated in the above-named county and state, to wit: -----

That the defendants claim certain estates or interests in, or liens or encumbrances upon, the same, as the case may be, adverse to plaintiff. (Here allege the facts concerning use and occupation and value thereof, and any property wasted or removed and the value thereof, if pertinent. Where the state

is named as a party defendant, the complaint must state the interest the state or its agencies or departments might have in the property; or in the alternative state that the complainant is not aware of any specific interest that the state might have in the property.)

Wherefore, plaintiff prays:

1. That the defendants be required to set forth all their adverse claims to the property above described, and that the validity, superiority, and priority thereof be determined.
2. That the same be adjudged null and void, and that they be decreed to have no estate or interest in, or lien or encumbrance upon, said property.
3. That this title be quieted as to such claim, and that defendants be forever debarred and enjoined from further asserting the same.
4. That he recover possession of the premises described, if possession is desired.
5. That he recover ----- dollars as the value of the use and occupation and value of property wasted and removed therefrom.
6. That he have such other general relief as may be just, together with costs and disbursements.

SECTION 79. AMENDMENT. Section 32-19-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19-30. Service by publication - How made. Service of the summons may be made by publication if the plaintiff shall file 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 cause of action 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 shall file 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 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.

* SECTION 80. AMENDMENT. Section 32-20-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-20-02. **Warrant to seize property.** If the plaintiff is not in possession of the property, the clerk of the court in which the action is commenced, at the time of the commencement of the action or at any time before judgment, may issue a warrant commanding the sheriff to seize and safely keep the same to abide the final judgment in the action. Such warrant may be issued upon the filing of a verified complaint with the clerk setting forth a ~~cause of action~~ claim for relief in favor of the plaintiff and against the defendant for the foreclosure of a lien upon the property possession of which is sought to be obtained. The sheriff immediately must execute the warrant by seizing the property and holding the same until disposed of according to law.

** SECTION 81. AMENDMENT. Section 32-20-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-20-03. **Form of warrant.** The warrant mentioned in section 32-20-02, exclusive of the venue and title of the action, ~~shall~~ must be in substantially the following form:

* NOTE: Section 32-20-02 was also amended by section 1 of Senate Bill No. 2085, chapter 378.

** NOTE: Section 32-20-03 was repealed by section 5 of Senate Bill No. 2085, chapter 378.

To the sheriff of the county of -----:

The plaintiff in the above entitled action having filed in my office a verified complaint setting forth a cause of action claim for relief in favor of the plaintiff and against the defendant above named for the foreclosure of a lien upon the personal property hereinafter described and having given the undertaking required by law;

Now, therefore, you are hereby commanded immediately to seize and safely keep, until disposed of according to law, the following described personal property belonging to the defendant ----- situated in the county of ----- and state of North Dakota, to wit: (Here insert description of property).

~~Such~~ The warrant shall be attested and sealed in the same manner as a ~~warrant~~ writ of attachment.

SECTION 82. AMENDMENT. Subsection 3 of section 32-22-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 3. If in a civil action the party has been discharged for any illegality in the order, judgment, or process and afterwards is imprisoned by legal process for the same cause of action claim for relief.

SECTION 83. AMENDMENT. Subsection 4 of section 32-38-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 4. If there is no judgment for the injury or wrongful death against the tort-feasor seeking contribution, his right of contribution is barred unless he has either discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action claim for relief against him and has commenced his action for contribution within one year after payment, or agreed while action is pending against him to discharge the common liability and has within one year after the agreement paid the liability and commenced his action for contribution.

* SECTION 84. AMENDMENT. Section 32-39-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-39-03. Agreement by parties - Credit for payment. Upon final voluntary compromise settlement of the claim, the parties may make any agreement they desire concerning previous voluntary partial payments. If the claim is tried in a court, after entry of judgment involving the claim, any such voluntary partial payment shall be treated as a credit against the judgment and shall be deducted from the amount of the judgment. If, after entry of judgment involving

* NOTE: Section 32-39-03 was also amended by section 3 of House Bill No. 1066, chapter 379.

the claim, it ~~shall be~~ is determined by the judgment that the amount of injury or damages is less than the voluntary payments already made, the payer of the payments ~~shall have~~ has no ~~right of action claim for relief~~ for the recovery of amounts by which the voluntary payments exceed such final court judgment.

SECTION 85. AMENDMENT. Section 34-01-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-01-13. Actions under Fair Labor Standards Act must be brought within certain time. All suits and actions for the recovery of overtime, damages, fees or penalties accruing under laws respecting the payment of wages, and specifically under the Act of Congress known as the Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.], as same has been or may hereafter be amended, and all other similar acts ~~shall must~~ be brought within two years after the accrual of such ~~cause of action claim for relief~~, and all ~~causes of action claims for relief~~ accruing prior to the date hereof ~~shall must~~ be brought within one year after passage of this section. This section ~~shall does~~ not affect suits pending at the time of its passage.

SECTION 86. AMENDMENT. Section 34-06.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-06.1-05. Collection of unpaid wages and other relief. Any employer who violates the provisions of section 34-06.1-03 ~~shall be~~ is liable to the employee or employees affected in the amount of their unpaid wages, and in instances of willful violation in employee suits up to an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. The court in such action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. ~~No~~ An agreement by any such employee to work for less than the wage to which such employee is entitled under this chapter ~~shall be~~ is not a bar to any such action, or to a voluntary wage restitution of the full amount due under this chapter. At the written request of any employee claiming to have been paid less than the wage to which he may be entitled under this chapter, the commissioner may bring any legal action necessary in behalf of the employee to collect such claim for unpaid wages. The commissioner ~~shall may~~ not be required to pay the filing fee, or other costs, in connection with such action. The commissioner ~~shall have~~ has the power to join various claims against the employer in one ~~cause of action claim for relief~~. In proceedings under this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of this chapter. The commissioner ~~shall have~~ has the power to petition any court of competent jurisdiction to restrain violations of section 34-06.1-03, and for such affirmative relief as the court may deem appropriate, including

restoration of unpaid wages and reinstatement of employees, consistent with the purpose of this chapter.

SECTION 87. AMENDMENT. Section 34-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-06.1-06. Statute of limitations. Court action under this chapter may be commenced no later than two years after the ~~cause of action~~ claim for relief occurs.

SECTION 88. AMENDMENT. Section 34-08-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-08-09. Judgment may be entered on undertaking - Notice required. The undertaking mentioned in section 34-08-08 ~~shall constitute~~ constitutes an agreement entered into by the complainant and his surety upon which a judgment may be rendered against the complainant and his surety in the same proceeding in which such undertaking is filed, and such complainant and surety, by filing the undertaking, submit themselves to the jurisdiction of the court for such purpose. Such judgment shall be rendered only after a hearing to assess damages, and the complainant and his surety shall have reasonable notice of such hearing. Nothing contained in this section ~~shall preclude~~ precludes any party having a claim ~~or cause of action for~~ relief upon such undertaking from pursuing his ordinary remedy by suit at law.

SECTION 89. AMENDMENT. Section 34-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-14-08. Assignment of wage claims to commissioner of labor for recovery by civil action. The commissioner of labor or his deputy ~~shall have~~ has the power and authority to take assignments of wage claims and ~~rights of action claims for relief~~ rights of action claims for relief for penalties provided by section 34-14-09, without being bound by any of the technical rules with reference to the validity of such assignments; and ~~shall have~~ has the power and authority to prosecute actions for the collection of such claims on behalf of persons who, in the judgment of the commissioner or his deputy, are entitled to the services of the commissioner or his deputy and who, in his judgment, have claims which are valid and enforceable in the courts. The commissioner or his deputy ~~shall have~~ has the power to join various claimants in one preferred claim or lien, and in case of suit to join them in one ~~cause of action claim for relief~~ cause of action claim for relief.

SECTION 90. AMENDMENT. Section 35-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-18-01. Hospital lien authorized for services to injured persons - Attachment to ~~rights of action~~ claims for relief, insurance, and other claims. Any charitable association, corporation, or other institution maintaining a hospital in this state ~~shall be is~~ is entitled to a lien for the reasonable value of hospitalization

services rendered to a person injured in any accident. The lien shall attach to all ~~rights of action~~ claims for relief, claims, demands, and judgments recovered on account of the injuries against persons or corporations liable to the injured person in tort for damages occasioned by negligence causing the injuries, and shall attach to the proceeds of the settlement of such claims or demands, and to insurance of the tort-feasor payable by reason of the liability occasioned by such injury, and to any insurance or indemnity payable to the injured person by any insurer.

SECTION 91. AMENDMENT. Section 35-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-18-05. Filing is notice to whom - Effect of payment or release of claim. The filing of a hospital statement, from the time of filing thereof, ~~shall be~~ is constructive notice to all persons of the claim of the hospital and of its right to a lien upon any claim or demand or ~~cause of action claim for relief~~ against the tort-feasors and the insurer or insurers of the tort-feasors, or an insurer of the injured person, and no release of any judgment, claim, or demand by the injured person ~~shall be~~ is valid or effective as against the lien. The person or corporation making any payment to the injured person, or to his legal representative, as compensation for injuries sustained, in settlement of a ~~cause of action claim for relief~~ claimed to exist for negligence causing such injuries, or out of insurance carried by the tort-feasor, shall remain liable to the hospital for the amount of the reasonable charges due at the time of such payment to the extent of the full amount so paid or given to the injured person.

SECTION 92. AMENDMENT. Section 35-18-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-18-11. Action on lien - Limitations. An action to enforce a hospital lien ~~shall~~ must be commenced within one year after the filing of the lien, except that when the ~~cause of action claim for relief~~ against a tort-feasor or insurer ~~shall~~ has not have become barred or an action is pending involving the question of liability, the lien ~~shall~~ continue continues in effect until the final termination of such action and for a period of one year thereafter.

SECTION 93. AMENDMENT. Section 35-27-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-27. Assignment of claims. Any claim for which a lien may be or has been filed and the right ~~of action~~ to recover therefor under the provisions of this chapter may be assigned by an instrument in writing. Such assignment ~~shall~~ vest vests in the assignee all rights and remedies herein given, subject to all defenses that might have been interposed if such assignment had not been made.

SECTION 94. AMENDMENT. Section 36-04-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-12. Department to become trustee upon default in dealer's bond. If any dealer defaults in the provisions of any bond provided for in this chapter, he ~~shall be~~ is deemed to be insolvent within the meaning of this chapter. ~~The cause of action claim for relief for damages upon any such the bond, and the amount recovered in any cause of action claim for relief for the conversion of livestock or wool, as the case may be, purchased by such the dealer while such the license is in force and effect, shall constitute constitutes a trust fund in the hands of the department for all persons having a cause of action claim for relief against such the dealer on said bond.~~

SECTION 95. AMENDMENT. Section 36-04-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-16. Remedy of claimants - Separate action by claimant permissible. No claimant ~~shall have~~ has a separate ~~cause of action claim for relief against the dealer's bond unless the department shall fail fails or refuse refuses~~ to apply for its own appointment as trustee as provided in this chapter. ~~The provisions of this This chapter shall does~~ not prohibit any claimant, either independently or in conjunction with other claimants, from pursuing concurrently with the department any other remedy which he or they may have against the dealer, or against the property of the dealer, for the whole of his or their claims or for any deficiency which occurs after payments have been made from the trust fund.

SECTION 96. AMENDMENT. Section 36-22-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-22-08. Disposition of unclaimed receipts from sale of estrays. Any funds in the hands of said association, or hereinafter received by it from the sale of estrays which ~~shall are~~ not be claimed by the owners within one year from the posting of the notice provided for in section 36-22-07 shall be turned ~~into in to~~ the general fund of the association. All records relative to estrays shall be preserved by the association for a period of six years subsequent to the time the money reverts to the general fund of the association. Provided, however, that nothing herein ~~shall bar bars~~ the lawful owner of any estray from maintaining an action against said association for the recovery of any sum to which he may be entitled within the period of limitation given by general law governing other ~~causes of action claims for relief~~ of like character.

SECTION 97. AMENDMENT. Section 38-14.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.2-09. Affected lands - Right of entry. If the commission makes a finding of fact that:

1. Land or water resources have been adversely affected by past coal mining or non-coal mining practices; and

2. The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or non-coal mining practices are not known or readily available; or
4. The owner will not give permission for the commission, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or non-coal mining practices,

then, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies, the commission, its agents, employees, or contractors ~~shall have~~ has the right to enter upon the property adversely affected by past coal mining or non-coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and ~~shall~~ may not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon ~~shall be~~ are chargeable against such land to the extent allowed in section 38-14.2-14 and ~~shall~~ mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry; provided, however, that this provision is not intended to create new rights of action claims for relief or eliminate existing immunities.

SECTION 98. AMENDMENT. Subsection 27 of section 39-01-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27. "Judgment" means any judgment which ~~shall have~~ has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a cause of action claim for relief arising out of ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action claim for relief on an agreement of settlement for such damages.

SECTION 99. AMENDMENT. Section 39-12-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-11. Impounding overweight vehicle. Any vehicle found to have been moved or used upon any highway, street, or road in this state at a weight exceeding the limitations as specified in any order, ordinance, or resolution issued under the provisions of section 39-12-03 or as limited by the provisions of section 39-12-05 or ~~39-12-05-1~~, may be impounded by any peace officer and taken to a warehouse or garage for storage.

SECTION 100. AMENDMENT. Subsection 3 of section 39-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Judgment" means any judgment which ~~shall have~~ has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a ~~cause of action claim for relief~~ cause of action claim for relief arising out of ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a ~~cause of action claim for relief~~ cause of action claim for relief on an agreement of settlement for such damages.

* SECTION 101. AMENDMENT. Section 39-16.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-01. Application. The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, ~~shall~~ apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws or who have failed to pay judgments upon ~~causes of action claims for relief~~ causes of action claims for relief arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of this state.

SECTION 102. AMENDMENT. Section 39-22.3-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22.3-07. Dealer permitting license to be used by another dealer - License revoked - Penalty. Any A dealer who permits any other dealer to use ~~their~~ that first dealer's license, or permits the use of such license for the benefit of any other dealer, ~~shall have their dealer's license revoked and shall be is~~ guilty of an infraction. The registrar of motor vehicles shall revoke the license of any dealer who violates this section.

* NOTE: Section 39-16.1-01 was also amended by section 9 of Senate Bill No. 2373, chapter 429.

SECTION 103. AMENDMENT. Section 40-05.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05.1-13. Vested property - ~~Rights of action~~ Claims for relief - Actions saved. The adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, ~~rights of action claims for relief~~, claims, and demands of any nature or kind whatever vested in the city under and by virtue of any charter theretofore existing or otherwise accruing to the city, but all such ~~rights of action claims for relief~~, claims, or demands shall vest in and inure to the city and to any persons asserting any such claims against the city as fully and completely as though the said charter or amendment had not been adopted hereunder. The adoption of any charter or amendment hereunder shall never be construed to affect the right of the city to collect by special assessment any special assessment theretofore levied under any law or charter for the purpose of public improvements, nor affect any right of any contract or obligation existing between the city and any person, firm, or corporation for the making of any such improvements and for the purpose of collecting any such special assessments and carrying out of any such contract.

SECTION 104. AMENDMENT. Section 40-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-11-10. Action for violation of ordinance in corporate name - Previous prosecution, recovery, or acquittal no defense. Any action brought to recover any fine, to enforce any penalty, or to punish any violation of an ordinance of any municipality shall be brought in the corporate name of the municipality as plaintiff. A prosecution, recovery, or acquittal for the violation of any such ordinance shall ~~may~~ not constitute a defense to any other prosecution of the same person for any other violation of any such ordinance, notwithstanding that the different ~~causes of action claims for relief~~ existed at the time of the previous prosecution and if united, would not have exceeded the jurisdiction of the court.

SECTION 105. AMENDMENT. Section 40-49-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-17. Jurisdiction to determine actions involving violations of ordinances of board of park commissioners. Full and exclusive jurisdiction to try and determine all ~~causes of action claims for relief~~ involving violations of rules or ordinances enacted by the board of park commissioners shall be is vested in the municipal judge. The procedure, including the right of appeal, shall be is the same as in actions involving offenses against city ordinances.

SECTION 106. AMENDMENT. Subsection 1 of section 41-02-101 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A right of action claim for relief against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action claim for relief is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other.

SECTION 107. AMENDMENT. Section 41-02-104 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-02-104. (2-725) Statute of limitations in contracts for sale.

1. An action for breach of any contract for sale must be commenced within four years after the cause of action claim for relief has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.
2. A cause of action claim for relief accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action claim for relief accrues when the breach is or should have been discovered.
3. Where 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 breach such 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 claims for relief which have accrued before this title becomes effective.

SECTION 108. AMENDMENT. Section 41-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-03-22. (3-122) Accrual of cause of action claim for relief.

1. A cause of action claim for relief against a maker or an acceptor accrues:

- a. In the case of a time instrument on the day after maturity.
 - b. In the case of a demand instrument upon its date or, if no date is stated, on the date of issue.
2. A cause of action claim for relief against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.
 3. A cause of action claim for relief against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.
 4. Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:
 - a. In the case of a maker, acceptor, or other primary obligor of a demand instrument, from the date of demand; and
 - b. In all other cases from the date of accrual of the cause of action claim for relief.

SECTION 109. AMENDMENT. Subsection 3 of section 41-03-68 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The liability of all parties is discharged when any party who has himself no right of action claim for relief or recourse on the instrument:
 - a. Reacquires the instrument in his own right; or
 - b. Is discharged under any provision of this chapter, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 41-03-73).

SECTION 110. AMENDMENT. Subsection 2 of section 41-05-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under section 41-02-73 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action claim for relief for wrongful dishonor.

SECTION 111. AMENDMENT. Section 43-23-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-10. Nonresident brokers - Reciprocity - Consent to service. A nonresident broker regularly engaged in the real estate business as a vocation, or a mortgage broker regularly engaged in the mortgage business as a vocation, and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, ~~shall~~ may not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker or mortgage broker by another state as satisfactorily qualifying him for license as a broker, provided that ~~said~~ the nonresident broker has qualified for license in his own state and also that ~~said~~ the other state permits licenses to be issued to licensed brokers in this state. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in which a cause of action claim for relief may arise, in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on any member of the commission, or the secretary-treasurer, said consent stipulating and agreeing that such service of such process or pleading shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. ~~Said~~ The consent shall be duly acknowledged. Any service of process or pleading shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered ~~or certified~~ mail to the last known main office of the applicant whom said process or pleading is directed, and no default in any such proceedings or action shall be taken except upon affidavit or certificate of the commission or the secretary-treasurer, that a copy of said process or pleading was mailed to the defendant as herein required, and no judgment by default shall be taken in any such action or proceeding until after thirty days from the date of mailing of such process or pleading to the nonresident defendant.

SECTION 112. AMENDMENT. Section 43-23.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23.1-19. Jurisdiction. Dispositions of subdivided lands are subject to this chapter, and the district courts of this state have jurisdiction in claims ~~or causes of action~~ for relief arising under this chapter if:

1. The subdivider's principal office is located in this state; or
2. Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this

state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

SECTION 113. AMENDMENT. Section 43-23.2-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23.2-05. Motion for dismissal - Commission may defend action. Whenever the court proceeds upon an application as set forth in this chapter, it shall order payment out of the real estate education, research, and recovery fund only upon a determination that the aggrieved party has a valid ~~cause of action~~ claim for relief within the purview of this chapter and has complied with the provisions of this chapter. The judgment ~~shall be~~ is only prima facie evidence of such ~~cause of action claim for relief~~ and for the purposes of this chapter ~~shall is~~ is not ~~be~~ be conclusive. The commission may defend any such action on behalf of the fund and ~~shall have~~ has recourse to all appropriate means of defense and review including examination of witnesses. The commission may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of this chapter; provided, however, the commission shall give written notice at least ten days before such motion. The commission may, subject to court approval, compromise a claim based upon the application of an aggrieved party. It ~~shall is~~ is not ~~be~~ be bound by any prior compromise or stipulation of the judgment debtor.

SECTION 114. AMENDMENT. Section 43-23.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23.2-06. Judgment debtor may defend - Default judgments. The judgment debtor may defend any such action on his own behalf and ~~shall have~~ has recourse to all appropriate means of defense and review, including examination of witnesses. Whenever an applicant's judgment is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant ~~shall have~~ has the burden of proving his ~~cause of action claim for relief~~ for fraudulent, deceptive, or dishonest practices, or conversion of trust funds. Otherwise, the judgment ~~shall create~~ creates a rebuttable presumption of the fraudulent, deceptive, or dishonest practices, or conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence.

SECTION 115. AMENDMENT. Section 43-31-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-31-06. Consent for service of process. Each nonresident applicant for an original license or a renewal license shall file an irrevocable consent that actions against the applicant may be filed in any appropriate court of any county of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged ~~cause of action~~ claim for relief arose and that process in any action may be served on the applicant by leaving two copies thereof with the attorney general. Such consent ~~shall~~ must stipulate and agree that such service of process shall be taken and held to be is valid and binding for all purposes. The attorney general shall send forthwith one copy of the process to the applicant at the address shown on the records of his office by registered ~~or certified~~ mail.

SECTION 116. AMENDMENT. Subdivision c of subsection 1 of section 43-40-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Being convicted of an offense, as defined by section 12.1-01-04, that the board determines has a direct bearing upon a person's ability to serve the public as an occupational therapist or an occupational therapy assistant or, following conviction of any offense, the board determines that the person is not sufficiently rehabilitated under section ~~12-1-32-02-1~~ 12.1-33-02.1.

SECTION 117. AMENDMENT. Subsection 2 of section 47-16-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. When the greater part of the property leased, or that part which was, and which the ~~lessee~~ lessor had reason to believe was, the material inducement to the ~~lessee~~ lessee to enter into the contract, perishes from any cause other than the ordinary negligence of the lessee.

SECTION 118. AMENDMENT. Section 47-16-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-30. Remedies against assignees of lessee. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of an agreement in the lease or for recovery of the possession, he also has against the assignees of the lessee for any ~~cause of action~~ claim for relief accruing while they are such assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

SECTION 119. AMENDMENT. Section 48-02-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-15. Claim for work or improvement - Suit on contractor's bond. Any person who has furnished labor or material for any work or

improvement for this state, any of its departments, or any school district, city, county, or township in the state in respect of which a bond is furnished under chapter 48-01 and who has not been paid in full within ninety days after completion of his contribution of labor or materials, ~~shall have~~ has the right to sue on such bond for the amount unpaid at the time of institution of suit. However, any person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, ~~shall does~~ not have a right of action claim for relief upon the bond unless he has given written notice to the contractor, within ninety days from the date on which the person completed his contribution, stating with substantial accuracy the amount claimed and the name of the person for whom the contribution was performed. Each notice shall be served by registered ~~or~~ certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office, conducts his business, or has a residence.

The contracting body and the agent in charge of its office are authorized and directed to furnish a certified copy of the bond and the contract for which it was given to anyone making an application therefor who submits an affidavit that either he has supplied labor or materials for such work or improvement and that payment has not been made, or that he is being sued on any such bond. Applicants shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond ~~shall~~ be is prima facie evidence of the contents, execution, and delivery of the original.

SECTION 120. AMENDMENT. Section 49-04.1-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-04.1-04. Reservation. This chapter does not limit or control any other statutory rights or ~~causes of action~~ claims for relief which may be brought by a utility.

SECTION 121. AMENDMENT. Section 51-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-09. Waiving, releasing, or barring of eause of action claim for relief before it actually has accrued prohibited. A eause of action or a right of action claim for relief arising out of the sale of personal property cannot be waived, released, or barred before such eause of action the claim for relief actually has accrued, notwithstanding any terms or provisions of any contract or other written instrument to the contrary.

SECTION 122. AMENDMENT. Subsection 3 of section 51-13-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The buyer waives any right of action claim for relief against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the personal property.

SECTION 123. AMENDMENT. Subsection 3 of section 51-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Compliance with the requirements of this section shall be is a condition precedent to any right of action claim for relief by the seller or any transferee of an instrument bearing the statement required under subsection 2 against the buyer upon such instrument and shall be pleaded and proved by any person who may institute an action or suit against a buyer in respect thereof.

SECTION 124. AMENDMENT. Section 51-21-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-21-04. Civil and criminal immunity for acts of detention. Any peace officer or merchant who detains any person as permitted under section 51-21-03 ~~shall~~ may not be held civilly or criminally liable for any cause of action claim for relief allegedly arising from such detention.

SECTION 125. AMENDMENT. Subsection 3 of section 51-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. An action to enforce any liability created under this chapter may be brought in any court of competent jurisdiction within two years from the date on which the cause of action claim for relief arose.

SECTION 126. AMENDMENT. Section 52-04-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-12. Civil action to collect contributions, interest, penalties, delinquency fees - Service on nonresident employers.

- 1- Collection process of the bureau shall also be by civil action for collection of any money owing to the bureau from any source and for whatever reason, inclusive of interest thereon, penalties and delinquency fees when there is provision for such additional assessments. Costs of the action allowed by statute shall be added when judgment is awarded against the debtor, unless waived. When the debtor is a nonresident of this state and the cause of action claim for relief accrued subsequent to July 1, 1963, and prior to July 1, 1969, jurisdiction

thereof by service of process shall be governed by the provisions of this section as it appeared in chapter 334 of the 1963 North Dakota Session Laws and the Supplement to the North Dakota Century Code from July 1, 1963, to July 1, 1969, and when the cause of action claim for relief accrued subsequent to July 1, 1969, and prior to August 1, 1971, jurisdiction thereof by service of process shall be governed by the provisions of chapter 293 of the 1969 North Dakota Session Laws and chapter 28-06.1 of the Supplement to the North Dakota Century Code, and when the cause of action accrued subsequent to August 1, 1971, jurisdiction thereof by service of process shall be governed by the amended provisions of rule 4 of the North Dakota Rules of Civil Procedure adopted and promulgated by the supreme court under date of June 28, 1971.

2- Repealed by S-L- 1973, ch- 391, § 23-

3- Repealed by S-L- 1973, ch- 391, § 23-

SECTION 127. AMENDMENT. Section 52-04-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-16. **Limitations on actions brought by bureau.** Actions brought under section 52-04-12 must be commenced within six years after the cause of action claim for relief has accrued; provided, however, that in the case of a false or fraudulent return, or the willful failure to file a return with intent to evade any payment, proceedings in court may be begun at any time.

SECTION 128. AMENDMENT. Section 54-18-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-18-12. **Civil actions on association transactions - Names of parties - Service - Venue - Statement filing provisions inapplicable.** Civil actions may be brought against the state of North Dakota on account of causes of action claims for relief claimed to have arisen out of transactions connected with the operation of the association upon condition that the provisions of this section are complied with. In such actions the state shall be designated as the state of North Dakota, doing business as North Dakota mill and elevator association, and the service of process therein shall be made upon the manager of the association. Such actions shall be brought in the county where the association shall have its principal place of business, except as provided in sections 28-04-01 through 28-04-04, 28-04-06, and 28-04-07. The provisions of section Section 54-14-04 shall does not apply to claims against the state affected by the provisions of this section.

SECTION 129. AMENDMENT. Section 54-46-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-46-03. State records administrator. The secretary of state director of the office of management and budget is hereby designated the state records administrator, hereinafter called 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.

SECTION 130. AMENDMENT. Section 54-46-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-46-11. Biennial report. The administrator shall submit a biennial report as prescribed by section 54-06-04 to the governor and of the director of the office of management and budget. In addition to any requirements established pursuant to section as required by sections 54-06-04, the report shall and 54-44-04 must describe the status and progress of programs established pursuant to this chapter and shall must include the recommendations of the administrator for improvements in the management of records in the state government.

SECTION 131. AMENDMENT. Section 54-46.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-46.1-01. Central microfilm unit. The secretary of state, in his capacity 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 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 shall be deposited in the general fund in the state treasury. Expenditures required for the operation of the central microfilm unit shall be made from the general fund and shall be limited to the amounts appropriated by the legislative assembly. The secretary of state administrator shall employ professional, technical, and clerical personnel as he deems necessary to carry out the duties prescribed in this chapter and shall, within the limits of the legislative appropriation, fix the salaries of all employees within the central microfilm unit. All personnel within the central microfilm unit shall be allowed their actual and necessary travel expenses at the same rate as for other employees of the state. The central microfilm unit shall be located in the state capitol building. The secretary of state is further authorized to administrator may perform microfilm services for the state institutions and for any county, when they request such services, and the secretary of state administrator agrees that the request is consistent with good records management practices.

SECTION 132. AMENDMENT. Section 54-46.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-46.1-02. Transfer of equipment - Exception - Alternative services. All microfilming equipment, except microfilm readers and reader-printers, in the state capitol building, the state highway department building, the state office building, and all other buildings on the capitol grounds shall, upon July 1, 1971, be subject to transfer and control by the secretary of state records administrator. The secretary of state shall have the authority to administrator may transfer such equipment to the central microfilm unit if, in his judgment, the needs of the central microfilm unit require such transfer and there are no special circumstances which justify an exception. Where any such equipment so transferred from any office, agency, or department was purchased from a dedicated fund or trust fund, the secretary of state administrator shall credit such office, agency, or department with an amount equal to the fair market value or fair rental value, if leased, of such equipment, and charges thereafter made to such office, agency, or department for services rendered by the central microfilm unit shall be offset against such credit. The secretary of state shall have the authority to 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 his judgment, the special needs of such office, agency, or department justify such an exception.

SECTION 133. AMENDMENT. Section 54-46.1-04 of the North Dakota Century Code is hereby amended and reenacted to read 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 secretary of state records administrator shall provide for duplicate storage of such photographic reproductions. The secretary of state administrator may enter into contracts for duplicate storage services if, in his judgment, such contracts are necessary for the safekeeping of photographic reproductions.

SECTION 134. AMENDMENT. Section 54-46.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-46.1-05. Restriction on purchases and contracts for microfilm equipment and services. No state office, agency, or department located in the city of Bismarck shall may enter into any contract or agreement for the purchase or lease of any microfilm equipment or services without the express approval of the secretary of state records administrator.

SECTION 135. AMENDMENT. Section 54-46.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-46.1-06. Premulgation Adoption of rules and regulations. The secretary of state shall have the authority to issue records administrator may adopt rules and regulations to establish standard procedures and practices in the development and use of the central microfilm unit.

* SECTION 136. AMENDMENT. Section 57-15-06.6 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.6. Levy authorized for regional or county corrections centers. The board of county commissioners of each county may levy an annual tax not exceeding the limitation in subsection 7 19.1 of section ~~57-15-06.8~~ 57-15-06.7 for the purpose of constructing, equipping, operating, and maintaining regional or county corrections centers.

SECTION 137. Subsections 19.1 and 28 to section 57-15-06.7 of the North Dakota Century Code are hereby created and enacted to read as follows:

19.1. A county levying a tax for regional or county corrections centers according to section 57-15-06.6 may levy a tax not exceeding five mills.

28. Tax levies made for paying the principal and interest on any obligations of the county evidenced by the issuance of bonds.

** SECTION 138. AMENDMENT. Section 57-15-06.8 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.8. County tax levies and limitations not in addition to the general fund levy. The following mill levies, expressed as mills on the dollar of taxable valuation of property within the county, may be levied by counties but are not excepted from the general mill levy limitations of section 57-15-06:

1. Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding one-half of one mill.
2. Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding one-fourth of one mill.
3. Counties levying a tax in accordance with section 4-02-27.1 for a county fair association may levy a tax not exceeding one-half mill.
4. Counties levying a tax for multicounty fairs according to section 4-02-37 may levy a tax not exceeding one-half of one mill.

* NOTE: Section 57-15-06.6 was also amended by section 1 of Senate Bill No. 2237, chapter 614.

** NOTE: Section 57-15-06.8 was also amended by section 3 of Senate Bill No. 2237, chapter 614, and amended by section 3 of House Bill No. 1413, chapter 89, and amended by section 1 of Senate Bill No. 2315, chapter 615.

5. Counties levying a tax for extraordinary expenditures according to section 11-11-24 may levy a tax not exceeding three mills.
6. Counties levying a tax to establish firebreaks according to section 18-07-01 may levy a tax not exceeding five mills.
7. Counties levying a tax for regional or county corrections centers according to section 57-15-06-6 may levy a tax not exceeding five mills.

Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

SECTION 139. Subsection 25.1 to section 57-15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

25.1. Taxes levied for transportation of public school students in accordance with section 57-15-55.1.

SECTION 140. Subsection 5.1 to section 57-15-20.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

5.1. A township levying a tax for a legal contingency fund in accordance with section 57-15-22.2 may levy a tax not exceeding ten mills for not to exceed five years.

* SECTION 141. AMENDMENT. Section 57-15-22.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-22.2. Levy of taxes for township legal contingency fund. Upon presentation of a petition signed by twenty-five percent of the electors in an organized or unorganized township voting in the last gubernatorial election, the governing body of an organized township or the board of county commissioners, for unorganized townships, may call a special election for the purpose of voting on the question of authorizing an excess levy on property within the township for the current year and not to exceed four succeeding years, or may submit the question to the voters at the next regular township election, for organized townships, or at the next regular election, for unorganized townships. If a special election is called, the election shall be held not later than September first of the year in which the tax is to be levied, and the election shall be conducted as other elections of the political subdivision are conducted. The levy permitted by this section shall be in addition to all other levies authorized by law and shall be in an amount not to exceed ten mills on the taxable value of property in the township for not to exceed five years may not exceed the limitation in subsection 5.1 of section 57-15-20.2. Revenues from the levy shall be deposited in a

* NOTE: Section 57-15-22.2 was also amended by section 100 of House Bill No. 1059, chapter 235.

special fund in the township or county treasury known as the legal contingency fund. Revenue in the fund may be used only for purposes of expenses of legal actions authorized or entered into by the governing body of the township or the county, on behalf of unorganized townships. If sixty percent of all votes cast on the question of authorizing the excess levy of taxes for the legal contingency fund are in favor of the excess levy, it shall be authorized and the county auditor shall extend such excess levy upon the tax list with other taxes. Upon expiration of any mill levy authorized by this section the governing body of the township or county may, by resolution, transfer any unobligated balance in the legal contingency fund to the general fund of the township or county.

SECTION 142. AMENDMENT. Section 57-15-55.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-55.1. City tax levy for transportation of public school students. The governing body of any city, upon approval by a majority vote of the electors of the city at any citywide election, may annually levy a tax on the ~~net~~ taxable assessed valuation of property within the city to provide funds for fees charged by a school district pursuant to section 15-34.2-06.1 for transportation for public school students who reside in the city but who attend school in another city in the same school district. A city levying a tax pursuant to this section may levy only so much as will be required to provide an amount representing the difference between the estimated state transportation payment to be received by the school district on behalf of students residing in the city but attending school outside of the city and the estimated actual cost to be incurred by the district in providing transportation for those students. ~~The mill levy provided for in this section is ever and above any mill levy limitations prescribed by law.~~

SECTION 143. AMENDMENT. Section 57-16-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-16-07. Certification of election results. If the percentage of the votes cast in favor of the question submitted is that specified in section 57-16-05 ~~57-15-14~~, such excess levy shall thereby be authorized. In such case, the election board shall certify the result of such election to the county auditor within ten days after such election. The certificate shall include a statement of the question as it appeared upon the ballot, together with the total number of votes cast upon the question, the number of votes cast in favor of it, and the number of votes cast against authorizing the excess levy. If the question proposed carried by the required majority, the county auditor shall extend such excess levy upon the tax lists of the school district.

SECTION 144. AMENDMENT. Section 57-26-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-26-07. Liability of auditor. If the amount paid to redeem is the amount certified by the auditor as the sum required, and it ~~shall appear~~ appears that such amount is less than the amount required by law, it ~~shall does~~ not invalidate such redemption, but the county auditor ~~shall be~~ is liable for the deficiency to the person entitled thereto, and personally ~~shall have~~ has a ~~right of action~~ claim for relief against the person redeeming to recover from him the amount of the deficiency.

SECTION 145. AMENDMENT. Section 57-30-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-30-02. Joinder of causes of action claims for relief. In any action brought by any county to determine adverse claims and to quiet title to real estate acquired through tax deed proceedings, the county may unite in the same complaint as many separate ~~causes of action~~ claims for relief as the state's attorney ~~shall deem~~ determines to be advisable, but each description of real estate and the name of any person claiming an adverse estate or interest therein shall be stated separately so that any answering defendant can take issue with the county by challenging the truth of the facts alleged in the particular paragraph applicable to the property of such answering defendant.

SECTION 146. AMENDMENT. Section 57-30-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-30-04. Actions - How tried - Judgments - When taken. Whenever any defendant answers the complaint in an action to quiet title and the issues have been joined, the ~~cause of action claim for relief~~ against the answering defendant may be tried separately to the court and a separate judgment may be entered thereon. Joint judgments by default may be taken, in the manner provided by law, against all defendants who may be in default, notwithstanding the fact that some of the defendants may have answered the complaint and that the issues presented thereby are pending trial.

SECTION 147. AMENDMENT. Section 57-38-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-35. Payment of tax. ~~Except as otherwise provided in section 57-38-36, every~~ Every taxpayer shall compute the amount of tax due under the return and shall attach thereto a check, draft, or money order, payable to the state tax commissioner, Bismarck, North Dakota, for the amount of the tax computed.

* SECTION 148. AMENDMENT. Section 57-38-61 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-61. Provisions of chapter applicable. The provisions of sections 57-38-34, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, ~~57-38-52,~~ 57-38-53, 57-38-54, 57-38-55, 57-38-56, and 57-38-57 shall, insofar as consistent therewith, govern the administration of sections 57-38-58, 57-38-59, and 57-38-60. The term "employer" as used in sections 57-38-58, 57-38-59, and 57-38-60 shall also mean means "taxpayer" as used in this chapter. In addition, the authority of the tax commissioner to ~~prescribe adopt~~ rules and regulations shall include includes the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in ~~the~~ this state of North Dakota.

SECTION 149. AMENDMENT. Section 57-39.2-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-23. Information deemed confidential. It shall be 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, ~~the District of Columbia,~~ and the United States ~~and its territories,~~ 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, ~~the District of Columbia,~~ and the United States ~~and its territories~~ for tax purposes.

The commissioner is hereby authorized to furnish to the workmen's compensation bureau or to the ~~unemployment compensation~~ 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, or any

* NOTE: Section 57-38-61 was also amended by section 2 of House Bill No. 1500, chapter 636.

person having an administrative duty under this chapter, is hereby authorized to announce that a permit has been revoked.

SECTION 150. AMENDMENT. Section 58-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-04-09. Challenge to voter - Duty of judges. If any person offering to vote at any election or upon any question arising at a township meeting is challenged as unqualified, the judges shall proceed in the manner in which judges at a general election are required to proceed, adapting the ~~oath affidavit~~ affidavit described in ~~title 16 section 16.1-05-06~~ to the circumstances of the township meeting.

SECTION 151. AMENDMENT. Section 58-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-14-01. Action by or against township - Procedure - Effect and judgment. Whenever any controversy or ~~cause of action claim for relief~~ exists between townships or between a township and a person, a civil action may be commenced and prosecuted for the purpose of trying and determining the controversy. The action shall be conducted as any other action or proceeding of a similar kind is conducted.

SECTION 152. AMENDMENT. Section 60-04-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-03.1. Trust fund established. Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of receipt holders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. The trust fund ~~shall~~ must consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.
2. The proceeds of insurance policies upon grain destroyed in the elevator.
3. The ~~cause of action claims for relief~~, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman.
4. The ~~cause of action claim for relief~~, and proceeds therefrom, for the conversion of any grain stored in the warehouse.

SECTION 153. AMENDMENT. Section 60-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-05. Remedy of receipt holders. No receipt holder shall have a separate ~~cause of action~~ claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receipt holder, except through the trustee, unless, upon demand of five or more receipt holders, the commission ~~shall fail~~ fails or refuse refuses to apply for its own appointment from the district court or unless the district court ~~shall deny~~ denies the application for appointment. Nothing contained in this ~~This~~ chapter shall be construed to do not prohibit or prevent any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently such other remedy against the person or property of such warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

SECTION 154. AMENDMENT. Section 61-02-61 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-61. Resolution or indenture may contain provisions protecting bondholders - Expenses incurred in carrying out indenture. Either the resolution providing for the issuance of bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the state and the commission in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works, and the custody, safeguarding, and application of all moneys, and may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the commission. Such resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual ~~rights of action~~ claims for relief of bondholders as is customary in trust indentures, deeds of trust, and mortgages securing bonds. No enumeration of particular powers granted ~~shall~~ may be construed to impair any general grant of power contained in this chapter. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the works affected by such indenture.

SECTION 155. AMENDMENT. Section 61-02-68.11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-68.11. Bond provisions applicable to interim financing notes. The provisions of sections 61-02-49, ~~61-02-50~~, ~~sections~~ 61-02-59 through, 61-02-60, 61-02-61, 61-02-62, and ~~section~~ 61-02-65,

relating to bonds ~~shall~~ also apply to notes issued pursuant to section 61-02-68.1.

SECTION 156. AMENDMENT. Section 61-02-72 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-72. Revenue bonds of commission are legal and valid investments of financial institutions - Exemption from taxation. Notwithstanding any restrictions contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, ~~all insurance associations and other persons carrying on an insurance business,~~ and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the commission pursuant to this chapter, and ~~such the bonds shall be~~ are authorized security for any and all public deposits, and ~~such.~~ The bonds, and the interest thereon, shall be are exempt from all state, county, and municipal taxes.

SECTION 157. AMENDMENT. Section 61-24.4-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24.4-09. Appropriation. All moneys in the oil extraction tax development fund which are allocated as provided in subsection 2 1 of section 57-51.1-07 are hereby appropriated to the sinking fund for the payment of interest and principal of all bonds issued and sold under this chapter. The state water commission may use all or part of the moneys allocated as provided in subsection 2 1 of section 57-51.1-07 to match any federal funds available for such purposes.

SECTION 158. AMENDMENT. Section 65-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-01. Purposes of compensation law - Police power. The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for workmen injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil causes of action claims for relief for such personal injuries and all jurisdiction of the courts of the state over such causes are abolished except as is otherwise provided in this title.

SECTION 159. AMENDMENT. Subsection 9 of section 65-01-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Employee" ~~shall mean~~ means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:
- a. Such term ~~shall include~~ 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 ~~shall be~~ is deemed sui juris for the purposes of this title, and no other person ~~shall may~~ have any cause of action claim for relief or right to compensation for any injury to such minor workman, 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. Such term ~~shall does~~ does not include:
- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his 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 ~~shall be~~ are deemed to be employees of the general contractor who ~~shall be~~ 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 ~~shall~~ may not be construed as imposing 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.

SECTION 160. AMENDMENT. Section 65-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-08. Contributing employer relieved from liability for injury to employee. Where a local or out-of-state employer has secured the payment of compensation to his employees by contributing premiums to the fund, the employee, and the parents of a minor employee, or the representatives or beneficiaries of either, ~~shall~~ have no ~~right of action claim for relief~~ against such contributing employer or against any agent, servant, or other employee of such employer for damages for personal injuries, but shall look solely to the fund for compensation.

SECTION 161. AMENDMENT. Section 65-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-06. Payment of compensation in lieu of ~~right of action claim for relief against employer~~. The payment of compensation or other benefits by the bureau to an injured employee, or to his dependents in case death has ensued, ~~shall be are~~ in lieu of any and all ~~rights of action claims for relief~~ whatsoever against the employer of the injured or deceased employee.

SECTION 162. REPEAL. Sections 14-02-11, 15-08-01.1, 50-02-02, 54-27.1-10, and subsection 13 of section 57-15-10 of the North Dakota Century Code, and sections 25-10-04 and 54-46-03.1 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1985

CHAPTER 83

SENATE BILL NO. 2087
(Legislative Council)
(Interim Judiciary "B" Committee)

IRRECONCILABLE STATUTES INTERPRETATION

AN ACT to amend and reenact section 1-02-09 of the North Dakota Century Code, relating to reconciliation of statutes passed during the same session.

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

SECTION 1. AMENDMENT. Section 1-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1-02-09. Irreconcilable statutes or constitutional amendments passed during the same session.

1. Whenever the provisions of two or more statutes passed during the same session of the legislative assembly are irreconcilable, the statute latest in date of final passage by the legislative assembly, irrespective of the date on which it was approved or allowed to become law by the governor or of its effective date, shall prevail from the time it becomes effective. However, whenever a provision of one or more statutes repeals a law and a provision of one or more statutes passed later during the same session of the legislative assembly amends that law, the provision amending the law prevails from the time it becomes effective only if:
 - a. The legislative council determines the intent of the legislative assembly was to retain the amended law as an independent law; or
 - b. The provision amending the law has an earlier effective date than the effective date of the provision repealing the law, in which case the amendment prevails from its effective date until the effective date of the provision repealing the law.
2. Whenever two or more concurrent resolutions, adopted during the same session of the legislative assembly,

propose to create or amend, or amend and repeal, the same section of the Constitution of North Dakota, the secretary of state, in consultation with the attorney general, shall determine if the proposals are irreconcilable, and if they are irreconcilable, the resolution last adopted by the legislative assembly, as determined by the legislative council or its designee, shall be placed on the ballot for the appropriate election for approval or disapproval by the electorate.

Approved March 22, 1985

CHAPTER 84

SENATE BILL NO. 2088
(Legislative Council)
(Interim Judiciary "B" Committee)

HEADNOTE SIGNIFICANCE

AN ACT to amend and reenact section 1-02-12 of the North Dakota Century Code, relating to headnotes.

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

SECTION 1. AMENDMENT. Section 1-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1-02-12. Headnote, cross-reference note, and source note. No headnote, source note, or cross-reference note, whether designating an entire title, chapter, section, subsection, or subdivision, ~~shall constitute~~ constitutes any part of a statute. A headnote may not be used to determine legislative intent or the legislative history for any statute.

Approved March 22, 1985

AERONAUTICS

CHAPTER 85

SENATE BILL NO. 2094
(Legislative Council)
(Interim Political Subdivisions "A" Committee)

AIRPORT TOLL ROADS

AN ACT to create and enact a new subsection to section 2-02-06 and a new subsection to section 2-06-07 of the North Dakota Century Code, relating to power of certain airport operators and airport authorities to establish toll access roadways.

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

SECTION 1. A new subsection to section 2-02-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Establish toll access roadways leading to air carrier terminal buildings. The toll access charge may not exceed one dollar per vehicle.

SECTION 2. A new subsection to section 2-06-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

To establish toll access roadways leading to air carrier terminal buildings. The toll access charge may not exceed one dollar per vehicle.

Approved March 22, 1985

AGENCY

CHAPTER 86

SENATE BILL NO. 2323
(Adams)

AUCTION CLERK AUTHORITY

AN ACT to amend and reenact section 3-05-01 and subsection 3 of section 41-06-08 of the North Dakota Century Code, relating to auction clerks.

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

SECTION 1. AMENDMENT. Section 3-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3-05-01. Authority from seller. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller only as follows:

1. To sell by public auction to the highest bidder;
2. To sell for cash only, except such articles as usually are sold on credit at auction;
3. To warrant the title, quality, and quantity of personal property sold by him;
4. To prescribe reasonable rules and terms of sale;
5. To deliver the thing sold upon payment of the price, to the clerk of the auction; and
6. ~~To collect the price; and~~
7. To do whatever else is necessary or proper and usual in the ordinary course of business for effecting these purposes.

SECTION 2. AMENDMENT. Subsection 3 of section 41-06-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The person or persons other than the transferor who direct, control, or are responsible for the auction, including the clerk of the auction are collectively called the "auctioneer". The auctioneer shall:
- a. Receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this chapter (section 41-06-04);
 - b. Give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and
 - c. Assure that the net proceeds of the auction are applied as provided in this chapter (section 41-06-06).

Approved March 30, 1985

AGRICULTURE

CHAPTER 87

HOUSE BILL NO. 1163
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

MARKETING BUREAU PARTICIPATION WITH EXPORT TRADING COMPANIES

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to the marketing bureau participating with export trading companies as part of its marketing function.

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

SECTION 1. A new section to chapter 4-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Marketing bureau - Participation with export trading companies. To accomplish its purpose of engaging in marketing services for agricultural products, the marketing bureau may 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. 1843] 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 the purposes of this section "participate" means providing marketing services for North Dakota agricultural commodities to, and gathering and disseminating statistical information on North Dakota agricultural marketing problems for, export trading companies. Additionally, the marketing bureau may provide marketing services for agricultural commodities to, and gather and disseminate statistical information on agricultural marketing problems for, the North Dakota mill and elevator association in its transactions with export trading companies.

Approved March 14, 1985

CHAPTER 88

SENATE BILL NO. 2349
(Senators W. Meyer, Vosper, Dotzenrod)
(Representatives Nicholas, Hedstrom, Gullickson)

FARM CREDIT COUNSELING

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to establishing a farm credit counseling program; to provide an appropriation; and to declare an emergency.

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

SECTION 1. A new section to chapter 4-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Farm credit counseling program. The commissioner of agriculture shall establish a farm credit counseling program to disseminate information to farmers concerning farm credit problems, and provide advice and counseling regarding farm credit problems. The commissioner of agriculture shall appoint a coordinator of the farm credit counseling program to implement and manage the program. The coordinator of the farm credit counseling program shall hire other necessary personnel and independent contractors to act as farm credit counselors.

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 \$460,000, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of funding the farm credit counseling program beginning from the effective date of this Act and ending June 30, 1987.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 29, 1985

CHAPTER 89

HOUSE BILL NO. 1413
(Representatives A. Olson, Myrdal, Smette)
(Senators Vosper, Freborg)

COUNTY FAIR MILL LEVY

AN ACT to amend and reenact sections 4-02-03, 4-02-04, and subsection 2 of section 57-15-06.8 of the North Dakota Century Code, relating to county fair mill levies.

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

SECTION 1. AMENDMENT. Section 4-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-03. Debts - Limitation of amount. A fair association shall not contract debts or liabilities in excess of the money in the treasury at the time of the contract, except that debts or liabilities may be contracted for in a sum not to exceed two thousand five hundred dollars when this sum is reasonably expected from the receipts of a fair or exposition to be held in the immediate future. The fair association also may contract a debt not to exceed ~~ten~~ twenty thousand dollars for the purchase of real property or for permanent improvements on real property owned by the association if the debt is secured by mortgage on the real property of the association. The directors voting for any debt contracted or incurred in violation of this section shall be liable personally thereon.

SECTION 2. AMENDMENT. Section 4-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-04. Income and expenses - Membership in association and terms thereof. An agricultural fair association shall not be conducted for profit and shall have no capital stock. The bylaws of the association shall provide for charges to the public for admission to the grounds, fees for concessions, charges to exhibitors, and rental of the association's property, and the amounts thereof shall not be greater than is sufficient to discharge the association's debts for real estate and improvements thereon, to defray the current expenses of fairs, to carry on the business of the association, and to create a sinking fund in an amount not exceeding five twenty thousand dollars. The method of acquiring membership in the association, and

the term of such membership, shall be provided in the association's bylaws.

* SECTION 3. AMENDMENT. Subsection 2 of section 57-15-06.8 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding ~~one-fourth~~ of one mill.

Approved March 22, 1985

* NOTE: Section 57-15-06.8 was also amended by section 138 of Senate Bill No. 2086, chapter 82, and amended by section 3 of Senate Bill No. 2237, chapter 614, and amended by section 1 of Senate Bill No. 2315, chapter 615.

CHAPTER 90

HOUSE BILL NO. 1561
(Representatives Kingsbury, Nowatzki, A. Olson)
(Senators Vosper, Tallackson, Tweten)

SEED COMMISSION MEMBERSHIP

AN ACT to amend and reenact subsection 2 of section 4-09-03 of the North Dakota Century Code, relating to membership of the state seed commission.

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

SECTION 1. AMENDMENT. Subsection 2 of section 4-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The state seed commission, hereafter referred to as commission, shall be a seven-member board consisting of the president of the crop improvement association, the president of the certified potato growers association, the vice president for agriculture, North Dakota state university of agriculture and applied science, the president of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a public representative appointed by the commissioner of agriculture the highest elected officer of the red river valley potato growers association who is a North Dakota resident, and the commissioner of agriculture, or his the commissioner's designee, who shall serve as chairman.

Approved March 22, 1985

CHAPTER 91

HOUSE BILL NO. 1603
(Dalrymple)

AGRICULTURAL SEED LIABILITY

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to the liability of the state seed commission, seed department, commissioner, and certified or noncertified agricultural seed producers.

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

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Liability of seed commission, seed department, commissioner, and certified or noncertified agricultural seed producers. No warranties of any kind, either expressed or implied, including warranties of merchantability, fitness for a particular purpose, or absence of disease, are made by the state seed commission, the seed department, the commissioner or the commissioner's employees, or certified or noncertified agricultural seed producers as to the quantity or quality of the crop produced from the agricultural seeds or as to other produce which is inspected and certified, except as provided in this section. The only warranty made is that the agricultural seeds or other produce were produced, graded, packed, and inspected under the rules of the state seed department or United States department of agriculture. The commissioner and the commissioner's employees function and serve only in an official regulatory manner.

Approved March 14, 1985

CHAPTER 92

SENATE BILL NO. 2483
(Kelsh, Krauter)

SUNFLOWER COUNCIL MEMBERS AND DISTRICTS

AN ACT to amend and reenact sections 4-10.2-03 and 4-10.2-04 of the North Dakota Century Code, relating to membership and districts of the North Dakota state sunflower council.

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

SECTION 1. AMENDMENT. Section 4-10.2-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-03. North Dakota state sunflower council - Membership - Election - Term. There is hereby established a North Dakota sunflower council. The council shall be composed of one participating grower elected from each of the districts established in section 4-10.2-04. The chairman of the council shall be a member of the council elected by a majority vote of the council. The commissioner of agriculture shall be an ex officio member of the council. Every elected council member shall be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member shall be three years and shall begin on April first of the year of election, except that initially two members shall be elected for a three-year term; two members shall be elected for a two-year term; and two members shall be elected for a one-year term as designated by the commissioner. The term of the representative for district seven must coincide with the term of the representative for district six. If at any time during a member's term the member shall cease to possess any of the qualifications provided for in this chapter, the member's office shall be deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. The first election shall be held within forty-five days after April 9, 1977, and all elections thereafter shall be conducted within seventy-five days prior to April first. No elected member of the council shall be eligible to serve more than two consecutive three-year terms.

SECTION 2. AMENDMENT. Section 4-10.2-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-04. Sunflower districts - Establishment. The following sunflower districts are established for the purpose of dividing the state into districts containing as nearly equal sunflower acreages as practicable:

1. District one shall consist of the counties of Cavalier, Pembina, Ramsey, Walsh, Nelson, and Grand Forks.
2. District two shall consist of the counties of Griggs, Steele, Traill, Barnes, and Cass.
3. District three shall consist of the counties of LaMoure, Ransom, Richland, Dickey, and Sargent.
4. District four shall consist of the counties of Burleigh, Kidder, Stutsman, Emmons, Logan, and McIntosh.
5. District five shall consist of the counties of ~~Bottineau~~, Rolette, Towner, ~~McHenry~~, Pierce, Benson, Sheridan, Wells, Eddy, and Foster.
6. District six shall consist of the counties of Divide, Burke, Renville, Williams, Mountrail, Ward, ~~McKenzie~~, ~~Bunn~~, McLean, ~~Golden Valley~~, Billings, Stark, ~~Mercer~~, ~~Oliver~~, Merton, Slope, Hettinger, Grant, Bowman, Adams, and ~~Sieux~~ Bottineau, and McHenry.
7. District seven consists of the counties of Golden Valley, Billings, Stark, Morton, Slope, Hettinger, Grant, Bowman, Adams, Sioux, Dunn, McKenzie, Mercer, and Oliver.

Approved March 22, 1985

CHAPTER 93

SENATE BILL NO. 2284
(Senators Dotzenrod, Tweten)
(Representatives Nowatzki, Kent)

SOYBEAN COUNCIL

AN ACT to establish a North Dakota soybean council; to provide a penalty; and to provide an appropriation.

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

SECTION 1. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Commissioner" means commissioner of agriculture or the commissioner's designated representative.
2. "Council" means the North Dakota soybean council.
3. "Designated handler" means any person who initially places soybeans, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of soybeans into food for human consumption in any form. A grower selling the grower's unharvested soybeans, or delivering the grower's soybeans from the farm on which they are produced to storage facilities, packing sheds, or processing 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 soybeans out-of-state, or delivering the grower's soybeans from the farm where they were produced to any storage facility, packaging shed, or processing plant located outside the state.
4. "Grower" means any person who plants, raises, and harvests soybeans from more than ten acres [4.05 hectares].
5. "Participating grower" means a grower who has not been exempted from the payment of taxes on soybean production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on soybean production under this Act.

6. "Person" means an individual, partnership, corporation, association, grower, cooperative, or any other business unit.
7. "Processor" means a person who is actively engaged in the processing of soybeans for human consumption.
8. "Soybeans" means any and all varieties of soybeans, excluding edible beans, harvested within the state.

SECTION 2. North Dakota soybean council - Membership - Election - Term. There is hereby established a North Dakota soybean council. The council must be composed of one participating grower elected from each of the districts established in 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. The commissioner is an ex officio member of the council. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years, beginning on April first of the year of election, except that initially two members must be elected for three-year terms; three members must be elected for two-year terms; and three members must be elected for one-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 provided for in this chapter, the member's office is deemed vacant and the council shall, by majority vote, appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. The first election must be held before August 15, 1985, and all elections thereafter shall be conducted between January fifteenth and April first. No elected member of the council is eligible to serve more than two consecutive three-year terms.

SECTION 3. Soybean districts - Establishment. The following soybean districts are established for the purpose of dividing the state into districts containing as nearly equal soybean acreages as practicable:

1. District one consists of Richland County.
2. District two consists of the counties of Ransom, Sargent, Dickey, and LaMoure.
3. District three consists of Cass County.
4. District four consists of the counties of Barnes, Griggs, and Steele.
5. District five consists of Traill County.

6. District six consists of Grand Forks County.
7. District seven consists of the counties of Walsh, Pembina, and Nelson.
8. District eight consists of all remaining North Dakota counties where soybeans are grown.

SECTION 4. Meetings - Quorum - Compensation and expenses of council.

All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. Each member of the council, except the commissioner, will 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 council, except that no compensation may be paid to any council 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 the budget for approval. Items are to be paid by warrant-check issued by the office of management and budget.

SECTION 6. Council powers and duties. In the administration of this Act, the council may:

1. Contract and cooperate with any person or with any governmental department or agency for research, education, publicity, promotion, and transportation for the purposes of this Act.
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 such administrative, clerical, technical, and other personnel as it may deem necessary.
4. Accept donations of funds, property, services, or other assistance from public or private sources 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 taxes authorized by this Act, and to sue and be sued in the name of the council.
6. Formulate policies and programs regarding the discovery, promotion, and development of markets and industries for the utilization of soybeans grown within the state.

SECTION 7. Tax levies - Collection - Reports. Effective July 1, 1985, an assessment at the rate of two cents per bushel [35.24 liters] must be levied and imposed upon all soybeans grown in the state or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of soybeans.

A designated handler of soybeans shall file an application with the council on forms prescribed and furnished by the council. The forms must contain 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 agents of the 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 soybeans until it has furnished a certificate as required by this section.

Every designated handler of soybeans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of two cents per bushel [35.24 liters] by deducting the assessment from the purchase price of all soybeans 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 soybeans, 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, stating the quantity in individual and total amounts of soybeans received, sold, or shipped by it. The report must state from whom each individual amount was received. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this Act 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 "soybean fund" to be used exclusively to carry out this chapter. 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 8. Nonparticipating growers - Refunds. Any grower subject to the assessment provided by this Act 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 the refund application blank, if it is properly executed by the grower, returned within sixty 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 then the grower is

presumed to have agreed to the assessment. However, a grower, for any reason, having paid the tax more than once on the same soybeans, 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 soybean tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies and private businesses engaged in the purchase of soybeans.

SECTION 9. Advisory referendum by growers. Whenever fifteen percent of the participating growers, with not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct an advisory referendum among the participating growers of the state to determine whether they wish the legislative assembly to raise or lower the tax imposed by section 7 of this Act. The advisory referendum may be conducted only among participating growers who have paid all taxes assessed pursuant to this enactment for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which date may not be less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots may be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If a majority of the participating growers voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the commissioner prepare a bill to submit to the next legislative session to modify this Act in conformity therewith.

SECTION 10. 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 11. Penalty for nonpayment of assessment. Any designated handler who fails to pay any assessment levied by this Act on the date that the assessment becomes due is delinquent and the council shall levy a penalty on such delinquent payments 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 shall be collected in the manner as prescribed by section 10 of this Act.

SECTION 12. Continuing appropriation. All funds received by the council pursuant to this Act are hereby appropriated.

SECTION 13. Records of council - Inspection. All of the records of the council, including acreage reports, tax returns, claims of exemption, and any other data, records, or information retained by the council are public information and must be available for the inspection of any person for any lawful purpose during regular business hours at the office of the council.

SECTION 14. Penalty. Any person who willfully violates this Act is guilty of a class B misdemeanor.

Approved April 4, 1985

CHAPTER 94

HOUSE BILL NO. 1115
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

BEES

AN ACT to create and enact a new section to chapter 4-12.2 of the North Dakota Century Code, relating to requirements for licensing minors as beekeepers; to amend and reenact sections 4-12.2-10 and 4-12.2-18, and subsection 4 of section 4-12.2-22 of the North Dakota Century Code, relating to establishment of pollination locations, issuance of certificates of health, and revocation of beekeepers licenses; and to repeal subsection 12 of section 4-12.2-01 of the North Dakota Century Code, relating to honey houses.

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

SECTION 1. A new section to chapter 4-12.2 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Application of minors for beekeepers license - Liability for minor. A beekeeper who is licensed either as a commercial operator or sideline operator must be at least eighteen years of age. However, an applicant for a beekeepers license who is less than eighteen years of age may be licensed as a commercial operator or sideline operator if the application for license is signed by either the mother, father, or guardian of the applicant. Any civil 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 2. AMENDMENT. Section 4-12.2-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-10. Establishment of pollination locations.

1. When a person requests the commissioner to allow additional locations for the purpose of pollinating that

person's crop, the commissioner may waive the two-mile [3.22-kilometer] radius restriction if all the following conditions are met:

- 1- a. The applicant owns, leases, or rents the land on which the pollination location is to be located and uses the land for the purpose of growing a commercial seed, fruit, or other crop which depends on bees for pollination. The commissioner shall adopt rules defining these crops for which a location may be allowed for pollination and where necessary shall prescribe time limits for the placement of bees at pollination locations.
- 2- b. The applicant shall provide the department with all pertinent data and information necessary for the department to determine that each pollination location is needed to adequately pollinate the applicant's crop.
- 3- 2. The department may refuse to register a pollination location if the application does not demonstrate justification for the pollination location or specify the number and location of pollination locations needed for the purpose of adequately pollinating the applicant's crop.
- 4- 3. A pollination location may not be sold, leased, transferred, or rented to another person.
4. The department may refuse to register a pollination location if the applicant's bees and equipment have been found to not have at least a two-year disease free history.
5. The commissioner shall adopt rules defining those crops for which a location may be allowed for pollination, and where necessary may prescribe time limits for the placement of bees at pollination locations.

~~Property owners who produce a commercial seed, fruit, or other crop and own and personally manage bees maintained on their property are not subject to this section.~~

SECTION 3. AMENDMENT. Section 4-12.2-18 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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, the bees and equipment have been found to be disease free, and all fees and civil or criminal penalties have been paid, 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.

SECTION 4. AMENDMENT. Subsection 4 of section 4-12.2-22 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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.

SECTION 5. REPEAL. Subsection 12 of section 4-12.1-01 of the 1983 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 14, 1985

CHAPTER 95

HOUSE BILL NO. 1044
(Legislative Council)
(Interim Agriculture Committee)

VOTER APPROVAL OF SOIL CONSERVATION ORDINANCES

AN ACT to amend and reenact section 4-22-29 of the North Dakota Century Code, relating to vote requirements for approval of soil conservation ordinances.

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

SECTION 1. AMENDMENT. Section 4-22-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-29. Majority required to adopt ordinance - Effect of ordinance after adoption. No ordinance ~~shall~~ will be effective unless it is approved by at least ~~three-fourths~~ two-thirds of the voters voting in the referendum. If a proposed ordinance is approved, the supervisors shall enact it into law. Land use regulations prescribed in any ordinance adopted by the supervisors pursuant to this section ~~shall~~ have the force and effect of law in the district and ~~shall be~~ are binding and obligatory upon all qualified electors living within the district.

Approved March 14, 1985

CHAPTER 96

HOUSE BILL NO. 1621
(Representatives Starke, Nowatzki, Vander Vorst)
(Senators Wright, Bakewell)

SOIL CONSERVATION TRUST LANDS

AN ACT to amend and reenact section 4-22-51 of the North Dakota Century Code, relating to soil conservation trust lands.

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

SECTION 1. AMENDMENT. Section 4-22-51 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-51. Soil conservation trust lands. The state of North Dakota hereby accepts and declares to be held in trust for the soil conservation districts of the state for use in carrying out the soil conservation program those certain tracts or parcels of land lying and being in the ~~county of Burleigh and state of North Dakota~~ County and more particularly described as follows:

Township one hundred thirty-eight north, range eighty west, fifth principal meridian section fifteen: west one-half section sixteen: that portion of the southeast quarter described as follows: beginning at the southeast corner of said section sixteen, thence running north on the east line of said section 660 feet; thence west parallel with the south line of said section 2310 feet; thence south 660 feet to a point on the south line of said section 2310 feet west of the southeast corner of said section; thence east along the south line of said section 2310 feet to the place of beginning; containing thirty-five acres, more or less.

Subject, however, to the following rights, easements, exceptions, and reservations:

1. Easements for existing or established roads, highways and public utilities, if any.
2. Right reserved by the Department of the Army "to enter thereon and remove gravel and use the established rubbish disposal area as long as any part of Fort Lincoln Military Reservation is used by the department of the Army".

3. Reservation to the United States of America and its assigns of an undivided three-fourths interest in all coal, oil, gas, and other minerals, including three-fourths of all sand, gravel, stone, clay and similar materials, in or under such property, together with the usual mining rights, powers, and privileges, including the right at any and all times, to enter upon the land and use such parts of the surface as may be necessary in prospecting for, mining, saving and removing said minerals or materials, provided that such quantities of sand, gravel, stone, clay and similar materials, as may be required, may be utilized in the operation or improvement of the said lands.

The said lands, having been conveyed to the state of North Dakota by the United States of America for use in carrying out the soil conservation program of the soil conservation districts of the state, are further subject to the condition that they shall be used for public purposes and if at any time cease to be so used shall revert to and become revested in the United States. Upon approval by the United States of America in accordance with the original grant of the trust lands, the trust lands may be leased, sold, conveyed, traded for, or replaced by other land suitable for the benefit of the soil conservation program in this state. No lease, sale, conveyance, trade, or replacement of the trust lands may be made under conditions that will cause or may cause the reversion of the lands back to the United States of America.

The control, custody, possession, supervision, management, and operation, and transfer of the said trust lands and any replacement lands is hereby vested in the North Dakota Association of Soil Conservation Districts for use in carrying out the soil conservation program of the soil conservation districts of the state and the said association in such control, custody, possession, supervision, management, and operation, and transfer shall hold all accumulations of personal property or surplus funds derived from said lands in trust for the soil conservation districts of the state for use in carrying out the soil conservation program. Any transfer, sale, trade, or replacement of trust lands is excepted from section 38-09-01, and the North Dakota association of soil conservation districts may transfer all or a portion of the minerals held by the state or the association which are located under the trust lands. Any funds generated through bonuses, leases, royalties, or otherwise generated by minerals reserved by the association or funds generated from the sale of minerals must be held in trust as provided in this section.

Approved March 27, 1985

CHAPTER 97

HOUSE BILL NO. 1076
(Legislative Council)
(Interim Legislative Audit and Fiscal Review Committee)

INVESTMENT OF AGRICULTURAL COMMODITIES ENTITIES' MONEYS

AN ACT to provide for the state treasurer to invest moneys of the agricultural commodity entities.

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

SECTION 1. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, at the direction of the governing body of the respective agricultural commodity entity, shall provide for the investment of available moneys in the spud fund, sunflower fund, edible bean fund, barley fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The state treasurer, by rule, shall establish guidelines to be followed by the agricultural commodity organizations regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services provided by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund. These moneys may be expended only within the limits of legislative appropriation.

Approved March 22, 1985

CHAPTER 98

SENATE BILL NO. 2100
 (Senators Naaden, Tallackson)
 (Representative Nowatzki)

MILK PRODUCER ASSESSMENT

AN ACT to create and enact a new subsection to section 4-27-06 of the North Dakota Century Code, relating to assessments charged milk producers; to amend and reenact subsection 1 of section 4-27-06 of the North Dakota Century Code, relating to the assessment charged milk producers under the North Dakota Dairy Promotion Act; to repeal subsection 1 of section 4-27-06 of the North Dakota Century Code, relating to assessments charged milk producers; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subsection 1 of section 4-27-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There is hereby levied on each producer an assessment of one-half of one percent of the gross receipts of ten cents per hundredweight [45.36 kilograms] on all milk or some product therefrom produced in this state and sold by that producer.

SECTION 2. A new subsection to section 4-27-06 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

There is hereby levied an assessment of one-half of one percent of the gross receipts of all milk or some product therefrom produced in this state.

SECTION 3. REPEAL. Subsection 1 of section 4-27-06 of the 1983 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 4. EFFECTIVE DATE. Sections 2 and 3 of this Act become effective upon certification by the dairy commissioner to the secretary of state of the approval of any national referendum held pursuant to the Agricultural Adjustment Act [48 Stat. 31; 7 U.S.C. 608c] to lower the amount levied on milk producers by the United States department of agriculture or of the reduction or elimination of the amount levied on milk producers by the United States department of agriculture.

Approved April 11, 1985

CHAPTER 99

HOUSE BILL NO. 1483
(Representatives Nowatzki, G. Berg, Nicholas)
(Senators W. Meyer, Vosper)

WHEAT COMMISSION MEMBER COMPENSATION

AN ACT to amend and reenact section 4-28-05 of the North Dakota Century Code, relating to compensation of the members of the North Dakota state wheat commission.

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

SECTION 1. AMENDMENT. Section 4-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-28-05. Wheat commission - Meeting - Expenses - Legal adviser. Upon call of the governor, the commission shall first meet and organize by electing from the membership a chairman and vice chairman, who shall hold office for one year and until their successors are elected and have qualified. Thereafter the commission shall meet at least once every calendar quarter at such times and places as shall be determined by the commission and may meet in special meetings upon such call and notice as may be prescribed by rules adopted by the commission. Members of the commission shall be reimbursed for actual expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers and ~~shall be paid forty dollars~~ are entitled to receive the same per diem compensation as provided in section 54-35-10 for members of the legislative council for each day actually devoted to official business of the commission. The attorney general shall act as legal adviser to the commission or designate an assistant for that purpose and within the limit of the funds available to the commission it may employ other counsel to advise and represent the commission in its affairs and proceedings.

Approved March 27, 1985

CHAPTER 100

HOUSE BILL NO. 1177
(Committee on Agriculture)
(At the request of the Department of Agriculture)

IMITATION MILK SALES

AN ACT to create and enact a new subsection to section 4-30-01 and three new sections to chapter 4-30 of the North Dakota Century Code, relating to definitions for dairy products regulation, and the sale of imitation milk or imitation milk products and filled dairy products; to amend and reenact sections 4-30-53 and 4-30-56 of the North Dakota Century Code, relating to penalties for violation and enforcement of chapter 4-30 of the North Dakota Century Code, providing for dairy products regulation; to repeal sections 4-30-43 and 4-30-55 of the North Dakota Century Code, relating to the sale of filled dairy products and raw milk; and to provide a penalty.

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

SECTION 1. A new subsection to section 4-30-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"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.

SECTION 2. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prohibition against sales of imitation milk or imitation milk products and filled dairy products. No person may sell any food product or food compound that is imitation milk, an imitation milk product, or a filled dairy product unless:

1. The food product or food compound bears a statement on the main display panel of the package or container stating that the food product or food compound is "imitation milk", or an "imitation milk product" or a "filled dairy product", or that it "contains imitation milk", "contains imitation milk product", or "contains filled dairy product", in letters not less than one-half the size of the product name, but in no case may the letters be smaller than eighteen-point type size.
2. In the case of imitation milk or imitation milk products, the label on the food product or food compound shall clearly state the major differences in ingredients and nutritional value between the imitation milk or imitation milk product and the milk or milk product it imitates or resembles.
3. In the case of filled dairy products, the label on the food product or food compound shall clearly state the major differences in ingredients and nutritional value between the filled dairy product and any milk and milk product it imitates or resembles.

SECTION 3. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exception for uses as directed by physicians. This chapter does not prohibit the manufacture or sale of filled dairy products or imitation milk and imitation milk products when such foods are clearly labeled to show their composition and the fact that they are sold customarily for use as directed by order of a physician and are

prepared and designed for medicinal or special dietary use and prominently so labeled.

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

Sale of foods not imitation milk, imitation milk products, or filled dairy products. This chapter does not prohibit the manufacture or sale of proprietary foods which are clearly not imitation milk, imitation milk products, or filled dairy products, which do not contain imitation milk, imitation milk product, or filled dairy product, and which are not conducive to substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled dairy products by their manufacture or sale.

SECTION 5. AMENDMENT. Section 4-30-53 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-53. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty. Any person violating any of the provisions of this chapter or the rules of the dairy department for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, the dairy commissioner may assess a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation, and may collect such civil penalty by a civil proceeding in any appropriate court may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the dairy commissioner through an administrative hearing pursuant to chapter 28-32. If a civil penalty is imposed by the dairy commissioner through an administrative hearing and the civil penalty is not paid, the dairy commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The dairy commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

SECTION 6. AMENDMENT. Section 4-30-56 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-56. Enforcement. The commissioner is authorized and directed to administer and supervise the enforcement of this chapter; to provide for periodic inspections and investigations he deems necessary to disclose violations of any acts prohibited by this chapter or the rules of the department; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions or both, upon his own initiative. The provisions of this chapter and the rules of the department may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and filled dairy products, imitation milk, or imitation milk products, illegally held or otherwise involved in violation of this chapter shall be subject to seizure and disposition in accordance with an appropriate court order.

SECTION 7. REPEAL. Sections 4-30-43 and 4-30-55 of the North Dakota Century Code are hereby repealed.

CHAPTER 101

HOUSE BILL NO. 1119
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

STANDARDS FOR GRADE A MILK

AN ACT to amend and reenact section 4-30-36 of the North Dakota Century Code, relating to the minimum standards for grade A milk.

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

SECTION 1. AMENDMENT. Section 4-30-36 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 shall be the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, 1978 Recommendations of the United States Public Health Service" and all supplements added thereto except that the minimum requirements for ~~total~~ 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 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.

Approved February 6, 1985

CHAPTER 102

SENATE BILL NO. 2318
(J. Meyer, Dotzenrod)

COUNTY PEST COORDINATOR

AN ACT to amend and reenact section 4-33-11 of the North Dakota Century Code, relating to financing of local pest control programs.

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

SECTION 1. AMENDMENT. Section 4-33-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-33-11. Authority for financing local control programs - County pest coordinator.

1. The governing body of any political subdivision of this state may appropriate money for the control of pests. If state funds are involved, such money shall be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs that should be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in such event the governing body may, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that such levy shall not exceed the limitation in subsection 1 of section 57-15-28.1.
2. The board of county commissioners for any county shall designate a person to serve as county pest coordinator. The county weed control officer may serve in that capacity if approved by the board of county commissioners. The county pest coordinator shall administer local and private funds in cooperation with state and federal pest control programs. When state funds are involved, the county pest coordinator shall submit county and township control plans to the commissioner of agriculture for approval.

Approved March 22, 1985

CHAPTER 103

SENATE BILL NO. 2137
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

PESTICIDE REGULATION

AN ACT to create and enact three new sections to chapter 4-35, a new subsection to section 4-35-05, a new subsection to section 4-35-23, and a new subsection to section 4-35-24 of the North Dakota Century Code, relating to reports of damage from pesticide application, pesticide stop-sale orders, definition of applicator, civil penalties for violation of pesticide laws, and enforcement of payment of civil penalties; to amend and reenact section 4-35-09, subsection 4 of section 4-35-12, and section 4-35-21 of the North Dakota Century Code, relating to pesticide act requirements and enforcement; and to repeal sections 28-01-40 and 28-01-41 of the North Dakota Century Code, relating to reports of pesticide accidents or loss.

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

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reports of loss through pesticide application required. No civil action may be commenced arising out of the application of any pesticide by any applicator inflicting damage on property other than property within the target area of the pesticide application, unless the claimant has filed a verified report of loss with the commissioner of agriculture, together with proof of service of the verified report of loss upon the applicator allegedly responsible and, if the claimant is not the person for whom the work was done, then also the person for whom the work was done, within a period of sixty days from the occurrence of the loss or within sixty days from the date the claimant knew the loss had occurred. If the damage is alleged to have been occasioned to growing crops, the report must be filed prior to the time when fifty percent of the crop was harvested. If, however, the applicator does not inform the claimant of the legal requirements for the claimant to file a verified report of loss, the claimant shall have one year from the date of the incident to file a verified report of loss.

SECTION 2. A new section to chapter 4-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Contents of verified reports of damage. Any verified report of the loss arising out of the application of any pesticide by any applicator required by this chapter, must include, so far as known to the claimant: the name and address of the claimant, the type, kind, and location of property allegedly injured or damaged, the date the alleged injury or damage occurred, the name of applicator allegedly responsible for the loss or damage, and if the claimant is not the same person for whom the work was done, the name of the owner or occupant of the property for whom the applicator was rendering labor or services.

SECTION 3. A new section to chapter 4-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

"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.

SECTION 4. A new subsection to section 4-35-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Applicator" means any person who applies a pesticide to land.

SECTION 5. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-09. Commercial applicator's license. No person who would be a commercial applicator if certified shall purchase, use, or supervise the use of a restricted use pesticide without a commercial applicator's license issued by a county treasurer, unless exempted by this chapter, and without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board. The board shall require an annual fee of twenty dollars for each commercial applicator's license issued and a fee of five dollars for taking the examination, both of which are is to be paid to the county treasurer, who shall deposit the fees fee in the county general fund. The license shall expire on December thirty-first of each year. If the county extension agent finds the applicant qualified to apply pesticides in the classifications he has applied for after such examinations examination as the board shall require by regulation, and the

applicant meets all other requirements of this chapter, the county treasurer of the appropriate county shall issue a commercial applicator's license limited to the classifications ~~he~~ the applicant is qualified in. If a ~~license~~ certification is not to be issued as applied for, the county extension agent shall inform the applicant in writing of the reasons therefor. Individuals licensed pursuant to this section shall be deemed certified commercial applicators for the use of restricted use pesticides.

SECTION 6. AMENDMENT. Subsection 4 of section 4-35-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The board shall require each pesticide dealer to demonstrate to the county extension agent ~~his~~ knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination, after which the county treasurer shall issue a license of qualification. ~~A fee of five dollars shall be charged when an examination is requested and given.~~

*** SECTION 7. AMENDMENT.** Section 4-35-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-21. Reports of pesticide accidents or loss.

1. The board shall, by regulation, require the reporting to the commissioner of agriculture of pesticide accidents.
2. Any person claiming damages from a pesticide application inflicting damage on property other than property within the target area of the pesticide application shall report such the loss in accordance with sections 28-01-40 and 28-01-41 this chapter. Where damage is alleged to have occurred and the claimant has filed a report of loss in accordance with sections 28-01-40 and 28-01-41 this chapter, the claimant shall permit the commissioner, the ~~licensee~~ applicator, and his representatives to observe, during reasonable hours, the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the ~~licensee~~ applicator. The number of ~~licensee's~~ applicator's representatives who may make an observation under this subsection may be limited by the board.
3. A ~~commercial~~ An applicator shall inform any person employing him to apply to land any pesticide of the reporting requirements of section 28-01-40 this chapter.

* NOTE: Section 4-35-21 was also amended by section 1 of House Bill No. 1432, chapter 104.

SECTION 8. A new subsection to section 4-35-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

In addition to the criminal sanctions which may be imposed pursuant to subsections 1 and 2, a person found guilty of violating 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 or by the commissioner of agriculture through an administrative hearing pursuant to chapter 28-32.

SECTION 9. A new subsection to section 4-35-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

If a civil penalty pursuant to section 4-35-23 is imposed by the commissioner of agriculture through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. Additionally, the commissioner may suspend or revoke a license or certification issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

* SECTION 10. REPEAL. Sections 28-01-40 and 28-01-41 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 30, 1985

* NOTE: Section 28-01-40 which was repealed by section 10 of Senate Bill No. 2137 was amended by section 2 of House Bill No. 1432, chapter 104.

CHAPTER 104

HOUSE BILL NO. 1432
(Stofferahn, R. Berg)

PESTICIDE LOSS REPORTS

AN ACT to amend and reenact sections 4-35-21 and 28-01-40 of the North Dakota Century Code, or in the alternative to amend and reenact the new section to chapter 4-35 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2137, as approved by the forty-ninth legislative assembly, relating to reports of loss through pesticide application.

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

* SECTION 1. AMENDMENT. Section 4-35-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-21. Reports of pesticide accidents or loss.

1. The board shall, by regulation, require the reporting to the commissioner of agriculture of pesticide accidents.
2. Any person claiming damages from a pesticide application, except where the claimant was the operator or applicator of the pesticide, shall report such loss in accordance with sections 28-01-40 and 28-01-41. Where damage is alleged to have occurred and the claimant has filed a report of loss in accordance with sections 28-01-40 and 28-01-41, the claimant shall permit the commissioner, the licensee, and his representatives to observe, during reasonable hours, the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee. The number of licensee's representatives who may make an observation under this subsection may be limited by the board.

* NOTE: Section 4-35-21 was also amended by section 7 of Senate Bill No. 2137, chapter 103.

3. A commercial applicator shall inform any person employing him to apply to land any pesticide of the reporting requirements of section 28-01-40.

* SECTION 2. AMENDMENT. If Senate Bill No. 2137, of the forty-ninth legislative assembly, does not become effective, section 28-01-40 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-40. Reports of loss through pesticide application required. No civil action shall be commenced arising out of the use or application of any herbicide, insecticide, fungicide, or agricultural chemical by any applicator or operator, unless the claimant has filed a verified report of the loss with the state of North Dakota agriculture commissioner, together with proof of service of such verified report of loss upon the operator or applicator allegedly responsible and, if the claimant is not the person for whom such work was done, then also the person for whom such work was done within a period of sixty days from the occurrence of such loss or within sixty days from the date the claimant knew such loss had occurred, provided, however, if the damage is alleged to have been occasioned to growing crops, the report shall be filed prior to the time when fifty percent of the crop was harvested. No verified report of loss is required when the claimant was the operator or applicator of the herbicide, insecticide, fungicide, or agricultural chemical.

SECTION 3. AMENDMENT. If Senate Bill No. 2137, as approved by the forty-ninth legislative assembly, becomes effective, the new section to chapter 4-35 of the North Dakota Century Code, as created by section 1 of Senate Bill No. 2137, is hereby amended and reenacted to read as follows:

Reports of loss through pesticide application required. No civil action may be commenced arising out of the application of any pesticide by any applicator inflicting damage on property other than property within the target area of the pesticide application, unless the claimant has filed a verified report of loss with the commissioner of agriculture, together with proof of service of the verified report of loss upon the applicator allegedly responsible and, if the claimant is not the person for whom the work was done, then also the person for whom the work was done, within a period of sixty days from the occurrence of the loss or within sixty days from the date the claimant knew the loss had occurred. If the damage is alleged to have been occasioned to growing crops, the report must be filed prior to the time when fifty percent of the crop was harvested. If, however, the applicator does not inform the claimant of the legal requirements for the claimant to file a verified report of loss, the claimant shall have one year from the date of the incident to file a verified report of loss. No verified report of loss is required when the claimant was the operator or applicator of the herbicide, insecticide, fungicide, or agricultural chemical.

Approved March 29, 1985

* NOTE: Section 28-01-40 was repealed by section 10 of Senate Bill No. 2137, chapter 103.

CHAPTER 105

SENATE BILL NO. 2495
(Senators Kusler, Wright)
(Representatives Vander Vorst, Riehl)

AGRICULTURAL DEVELOPMENT ACT LOANS

AN ACT to amend and reenact subsection 1 of section 4-36-03 of the North Dakota Century Code, relating to qualifications for loans under the Agricultural Development Act.

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

* SECTION 1. AMENDMENT. Subsection 1 of section 4-36-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Agriculture or agricultural enterprise" means and includes, ~~but is not limited to,~~ the real and personal property constituting farms, ranches, and other agricultural commodity producers; agriculturally related businesses; agriculturally related sewage, liquid and solid waste collection, disposal, treatment, and drainage services, and facilities; and agriculturally related antipollution and air, water, ground, and subsurface pollution abatement and control facilities and services; agriculturally related permanent soil and water conservation projects, including the installation of tiling for drainage, planting of perennial grasses, legumes, shrubs or trees, the establishment of grassed waterways, and the construction of terraces, or any other permanent soil and water conservation practice approved by the local soil conservation or water resource district; and conservation farm equipment or any type of no-till or minimum-till machinery and equipment.

Approved April 4, 1985

* NOTE: Section 4-36-03 was also amended by section 8 of House Bill No. 1404, chapter 136.

CHAPTER 106

HOUSE BILL NO. 1135
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

AGRICULTURE IN THE CLASSROOM

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to the establishment of an agriculture in the classroom program and council.

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

SECTION 1. A new chapter to title 4 of the North Dakota Century Code is hereby created and enacted to read as follows:

Agriculture in the classroom program. Recognizing the need to promote and foster an understanding of the agricultural economy of the state of North Dakota and the values of rural lifestyles, an agriculture in the classroom program is hereby established to be administered by an agriculture in the classroom council in conjunction with the commissioner of agriculture.

Agriculture in the classroom council. An agriculture in the classroom council is hereby established. The council consists of twelve members to be appointed by the commissioner of agriculture. One member must be the commissioner of agriculture or the commissioner's designee, and one member must be the superintendent of public instruction or the superintendent's designee.

Purpose - Powers and duties. The agriculture in the classroom council shall develop agricultural curriculum activities and train teachers in these agricultural curriculum activities for grades kindergarten through twelve in this state's public school system. The council shall work with all educators, including the superintendent of public instruction, the state department of vocational education, the United States department of agriculture, and the state commissioner of agriculture in accomplishing its purpose. The council shall render services consistent with this purpose which include:

1. Consultations with the state superintendent of public instruction, the state department of vocational education,

the state commissioner of agriculture, and the United States department of agriculture.

2. Preparation of instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles.
3. Provide training programs for public school teachers in developed agricultural curriculum activities.
4. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles.
5. Monitor the quality and condition of the agriculture in the classroom program.

Gifts and grants. In order to carry out its duties under this chapter, the agriculture in the classroom council may contract for and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources. Additional income must be spent for the purpose designated, if any, in the gift, grant, or donation.

Expenses of council members. Members of the agriculture in the classroom council may not receive any compensation for their services on the council, but are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

Approved March 27, 1985

ALCOHOLIC BEVERAGES

CHAPTER 107

HOUSE BILL NO. 1416
(Representatives Stofferahn, O'Connell)
(Senator Kelsh)

SPECIAL LIQUOR PERMIT VIOLATION PENALTY

AN ACT to amend and reenact sections 5-02-01 and 5-02-01.1 of the North Dakota Century Code, relating to special permits for retail liquor sales; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 5-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-01. State and local retail license required - Exception. Any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and the governing body of any city, or board of county commissioners if said business is located outside the corporate limits of a city, is guilty of a class A misdemeanor. This section shall not apply to public carriers engaged in interstate commerce.

SECTION 2. AMENDMENT. Section 5-02-01.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-01.1. Special permit authorized - Penalty. The local governing body and the attorney general 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 on licensed premises as may be 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 shall not be valid for a period greater than three consecutive days. 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.

Approved March 27, 1985

CHAPTER 108

HOUSE BILL NO. 1428
(DeMers, Dorso, Timm, Gates, Lautenschlager)

MEMORIAL DAY ALCOHOL SALES

AN ACT to amend and reenact section 5-02-05 of the North Dakota Century Code, relating to dispensing or permitting the consumption of alcoholic beverages on licensed premises on certain days.

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

SECTION 1. AMENDMENT. Section 5-02-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-05. Disposal prohibited on certain days - Penalty. Except as permitted by section 5-02-05.1, 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 ~~so~~ dispenses alcoholic beverages or permits such consumption of alcoholic beverages on licensed premises on Memorial Day, Good Friday, Thanksgiving Day, Christmas 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 March 22, 1985

CHAPTER 109

HOUSE BILL NO. 1389
(Payne)CIVIC CENTER SUNDAY ALCOHOLIC BEVERAGE
PERMITS

AN ACT to amend and reenact subsections 1 and 3 of section 5-02-05.1 of the North Dakota Century Code, relating to special Sunday convention alcoholic beverage permit.

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

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 5-02-05.1 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Any city or county may issue a special Sunday convention alcoholic beverage permit to a private club, lodge, motel, or hotel, as defined under city ordinances or county resolutions and licensed as a retail alcoholic beverage establishment pursuant to chapter 5-02, or to a civic center, which serves as the headquarters for a state, multistate, or national convention of a bona fide organization recognized by the governing body of the city or county in which the convention is held. A county may not issue a permit under this section to a private club, lodge, motel, or hotel located within the geographical boundaries of a city.
3. Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in those rooms of the private club, lodge, motel, ~~or hotel~~, or civic center which have been specifically reserved for convention activities, but ~~shall~~ may not be permitted in bar and lounge areas containing the permanent bar fixtures and normally open to the public. 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. Under no circumstances ~~shall~~ may the general public be permitted to participate in the consumption of alcoholic beverages distributed under the authority and conditions of the special permit. It ~~shall~~ be ~~is~~ the duty of the private club, lodge, motel, ~~or hotel~~, or civic center granted the special permit to enforce the requirements of this section and the conditions established by the city or county under the permit.

Approved March 14, 1985

CHAPTER 110

SENATE BILL NO. 2301
(Krauter, Kelsh, Stenehjem)

OPEN BOTTLE LAW PENALTY

AN ACT to amend and reenact sections 5-03-01 and 39-08-18 of the North Dakota Century Code, relating to the penalties for illegal distribution of alcoholic beverages and for consuming alcoholic beverages in motor vehicles on public highways.

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

SECTION 1. AMENDMENT. Section 5-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-03-01. State wholesale license required - Qualifications - Penalty. Before any person shall engage in the sale at wholesale of beer or liquor in this state he shall first procure a license from only the state treasurer. Such license shall only allow sale to licensed retailers, licensed wholesalers and regular retail outlets on federal military reservations. No such license shall be issued unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. Applicant, other than corporate, must be a citizen of the United States and a resident of the state of North Dakota and a person of good moral character. If applicant is a corporation, the manager of the licensed premises shall be a resident of the state of North Dakota, a citizen of the United States, and a person of good moral character, and the officers, directors, and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
2. The state treasurer may require applicant to set forth such other information as is necessary to enable him to determine if a license should be granted.
3. No person shall be eligible for such a license unless he has a warehouse and office in this state in which is kept a complete set of records relative to his alcoholic beverage transactions in North Dakota.

Any person distributing alcoholic beverages in this state without compliance with the provisions of this title is guilty of ~~an infraction~~ a class B misdemeanor.

SECTION 2. AMENDMENT. Section 39-08-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-18. Open bottle law - Penalty. No person shall drink or consume alcoholic beverages, as defined in section 5-01-01, in or on any motor vehicle when such vehicle is upon a public highway or in an area used principally for public parking. No person shall have in his possession on his person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. The provisions of this section shall not prohibit the consumption or possession of alcoholic beverages in a house car, as defined by subsection 23 of section 39-01-01, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating the provisions of this section shall be assessed a fee of ~~twenty~~ twenty five dollars; however, the licensing authority shall not record the violation against the driving record of such person unless he was the driver of the automobile at the time that the violation occurred.

Approved April 11, 1985

BANKS AND BANKING

CHAPTER 111

SENATE BILL NO. 2406
(Senators Wogsland, Hilken)
(Representatives Hedstrom, Laughlin, Lang)

BANK AND FINANCIAL INSTITUTION DEFINITIONS

AN ACT to create and enact two new subsections to section 6-01-02 and a new section to chapter 6-02 of the North Dakota Century Code, relating to definitions of national banks and financial institutions and qualifications of banks; and to amend and reenact subsection 2 of section 6-01-02 of the North Dakota Century Code, relating to the definition of banks.

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

SECTION 1. AMENDMENT. Subsection 2 of section 6-01-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- "Bank" means any national bank, national banking association, firm, or corporation, state bank, state banking association, savings bank, or trust company, whether organized under the laws of this state or of the United States, engaged in the business of banking.

SECTION 2. Two new subsections to section 6-01-02 of the 1983 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.

"National bank" or "national banking association" mean an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].

SECTION 3. A new section to chapter 6-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Non-bank bank not qualified to do business. It is unlawful for any organization, association, or corporation, which owns or controls an institution insured by the federal deposit insurance corporation, to own or control an institution insured by the federal deposit insurance corporation or eligible to be insured by the federal deposit insurance corporation which accepts deposits that the depositor has a legal right to withdraw on demand or engages in the business of making commercial loans but does not do both.

CHAPTER 112

HOUSE BILL NO. 1123
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANKING OR CREDIT UNION BOARD MEMBER COMPENSATION

AN ACT to amend and reenact subsection 1 of section 6-01-03 of the North Dakota Century Code, relating to compensation for members of the state banking board and the state credit union board.

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

SECTION 1. AMENDMENT. Subsection 1 of section 6-01-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state banking board shall consist of the commissioner and six members to be appointed by the governor, four of whom shall each have had at least five years' experience in an executive capacity in the management of a state bank in the state of North Dakota, one of whom shall have had at least five years' experience in an executive capacity in the management of any state or national bank in North Dakota, and one of whom shall be a lay member from the public at large. The term of office of the members of the board, other than the commissioner, shall be for a period of five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the vacancy shall be filled by appointment by the governor for the unexpired term. The commissioner shall be the chairperson of the board and the attorney general shall be, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary. The board shall hold regular meetings in January, March, May, July, September, and November of each year and special meetings at the call of the commissioner in such place as the commissioner may designate within the state of North Dakota. The members of the board, other than the commissioner, shall receive fifty dollars per day and ~~their actual necessary expenses for transportation~~ while attending meetings, or in the performance of such special duties as the board may direct. ~~In the event of travel by automobile, they shall receive the same mileage expense allowed state employees.~~ Expense reimbursements for meals, lodging, and transportation shall be at the same rate as those allowed state employees.

Approved March 27, 1985

CHAPTER 113

HOUSE BILL NO. 1122
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

REMOVAL OF FINANCIAL INSTITUTION OFFICERS, DIRECTORS, AND EMPLOYEES

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to the power of the state banking board, and the state credit union board to remove officers, directors, and employees of financial corporations or institutions.

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

SECTION 1. A new section to chapter 6-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Removal of officers, directors, and employees of financial corporations or institutions.

1. The department of banking and financial institutions or the board may issue and serve upon any officer, director, or employee of a financial corporation or institution subject to its jurisdiction and upon the financial corporation or institution involved, a complaint stating the basis for the board's or the department's belief that the officer, director, or employee is engaging, or has engaged in any of the following conduct:
 - a. Violating any law, regulation, board order, or written agreement with the board;
 - b. Engaging or participating in any unsafe or unsound practice; or
 - c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint shall contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing shall be set not less than thirty days after the

- date the complaint is served upon the officer, director, or employee of the financial corporation or institution. The officer, director, or employee may waive the thirty day notice requirement.
3. If no hearing is requested within twenty days of the date the complaint is served upon the officer, director, or employee, or if a hearing is held and the board finds that the record so warrants, and if the board finds that the financial corporation or institution has suffered or will probably suffer significant loss or other significant damage or that the interest of its depositors, shareholders, members, or creditors could be seriously prejudiced, it may enter an order suspending or removing the officer, director, or employee.
 4. A contested or default suspension or removal order shall be effective immediately upon service on the officer, director, or employee and upon the financial corporation or institution. A consent order is effective as agreed.
 5. Any officer or director suspended or removed from office pursuant to this section shall not be eligible, while under suspension, for reelection to any official position within a financial corporation or institution in North Dakota for a period not exceeding three years from the effective date of the suspension or removal.
 6. When any officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation or institution is charged with a felony in state or federal court, involving conduct related to the financial corporation or institution, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the financial corporation's or institution's affairs. The order shall be effective immediately upon service of the order on the financial corporation or institution and the person charged, and shall remain in effect until the criminal charge is finally disposed of or until modified by the board. If a judgment of conviction is entered, the board may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge shall not preclude the commissioner or the board from pursuing administrative or civil remedies.

Approved March 14, 1985

CHAPTER 114

HOUSE BILL NO. 1124
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

CEASE AND DESIST ORDERS TO FINANCIAL INSTITUTIONS

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to the power of the state banking board, state credit union board, and the commissioner to issue cease and desist orders.

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

SECTION 1. A new section to chapter 6-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cease and desist orders.

1. The department of banking and financial institutions or the board may issue and serve upon a financial corporation or institution subject to its jurisdiction a complaint stating the factual basis for the department or board's belief that the financial corporation or institution is engaging in any of the following conduct:
 - a. An unsafe or unsound practice; or
 - b. A violation in the past or on a continuing basis of any law, regulation, board order or written agreement entered into with the board.
2. The complaint shall contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing shall be set not less than thirty days after the date the complaint is served upon the financial corporation or institution. The financial corporation or institution may waive the thirty day notice requirement.
3. If the financial corporation or institution fails to respond to the complaint within twenty days of its service, or if a hearing is held and the board concludes that the record so warrants, the board may enter an order

directing the financial corporation or institution to cease and desist from engaging in the conduct which was the subject of the complaint and hearing and to take corrective action.

4. The commissioner may enter an emergency, temporary cease and desist order if the commissioner finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation or institution, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation or institution. An emergency, temporary cease and desist order shall be effective immediately upon service on the financial corporation or institution and shall remain in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. Within ten days of the emergency, temporary cease and desist order a financial corporation or institution may appeal the entry of an emergency, temporary cease and desist order to the district court for the county in which the financial corporation or institution has located its main office.

Approved March 14, 1985

CHAPTER 115

SENATE BILL NO. 2122
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

FINANCIAL INSTITUTION EXAMINATIONS

AN ACT to amend and reenact sections 6-01-09 and 6-09-29 of the North Dakota Century Code, relating to the frequency of examinations of state chartered banking associations, the Bank of North Dakota, and other corporations and associations under the jurisdiction of the commissioner of banking and financial institutions.

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

SECTION 1. AMENDMENT. Section 6-01-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-09. Supervision and examination by commissioner of banking and financial institutions. The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and institutions placed within the jurisdiction of the board. Either the commissioner or one or more examiners shall visit each of the state banking associations and other corporations and associations placed under the commissioner's jurisdiction at least once each ~~eighteen~~ thirty months to examine their affairs and ascertain their financial condition. The visits shall be made without previous notice to the corporation or institution to be examined. The commissioner shall inspect and verify the assets and liabilities of the institution to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions, and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether such methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing such corporations and institutions, and for such purpose the commissioner may examine the officers, agents, and employees of such corporations and institutions and all persons doing business

therewith. The commissioner shall report the condition of such corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as, in its discretion, the exigencies may demand.

SECTION 2. AMENDMENT. Section 6-09-29 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-29. Department of banking and financial institutions and the industrial commission responsible for examinations and audit reports. The industrial commission shall be responsible for contracting with a nongovernment certified public accounting firm to annually audit the Bank of North Dakota in accordance with generally accepted auditing standards, which shall include inspection and verification of the assets in its possession and under its control with sufficient thoroughness to ascertain with reasonable certainty whether the valuations are carried correctly on its books. The auditor so hired shall audit the Bank's methods of operation and accounting, shall report the results to the industrial commission as soon as practicable, and shall furnish one copy to the legislative assembly. The costs of such audit shall be paid for by the Bank of North Dakota. The department of banking and financial institutions, through the commissioner, shall be responsible for an annual performing an examination of the Bank of North Dakota at least once each twenty-four months and for any investigation of the Bank which may be necessary. The results of this examination results, and any necessary investigation, shall be reported to the industrial commission as soon as practicable and to the legislative assembly. Fees for such examinations shall be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of one hundred thirty-five dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for the time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examinations herein provided for required by this section.

Approved March 22, 1985

CHAPTER 116

SENATE BILL NO. 2124
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK DIRECTOR OATH AND STOCK OWNERSHIP

AN ACT to amend and reenact section 6-03-04 of the North Dakota Century Code, relating to the filing of a bank director's oath of office; and to repeal section 6-03-03 of the North Dakota Century Code, relating to the requirement that bank directors own qualifying shares of the capital stock of the bank for which the person is a director or an equivalent interest in any company which has control over the bank.

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

SECTION 1. AMENDMENT. Section 6-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-04. Director's oath of office - Filing. Every director, when elected or appointed, shall take an oath that he the director shall, so far as the duty devolves upon him a director, diligently and honestly will administer the affairs of the association; that he and will not knowingly violate or willingly permit to be violated any of the provisions of this title; that he is a bona fide owner of the number of shares of stock, required by this title to become a director, standing in his own name on the books of the association; and that said stock is in his possession and control and is not hypothecated or in any way pledged as security for any debt. Such oath, subscribed by the director making it and certified by the officer before whom it was taken, at once shall be transmitted to the state examiner commissioner to be filed in his the commissioner's office.

SECTION 2. REPEAL. Section 6-03-03 of the 1983 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 22, 1985

CHAPTER 117

SENATE BILL NO. 2326
(Lodoen)

BANK REAL ESTATE OWNERSHIP

AN ACT to amend and reenact section 6-03-05 of the North Dakota Century Code, relating to the limitation on the amount of real estate owned or carried by banking associations.

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

SECTION 1. AMENDMENT. Section 6-03-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-05. Loans on real estate - Regulation - Limitation - Amortized loans provided for. No association shall 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 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 shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors, 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 to determine if the loan shall be granted. Such written report shall be made a permanent record in the bank's files and shall be made available to the commissioner. No director shall 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 ~~and for a term not longer than thirty years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan 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.

Approved March 30, 1985

CHAPTER 118

SENATE BILL NO. 2123
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK INVESTMENTS

AN ACT to amend and reenact section 6-03-07 of the North Dakota Century Code, relating to state banking association investments in banking facilities, furniture, and fixtures.

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

SECTION 1. AMENDMENT. Section 6-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-07. Investment in banking facility, furniture, and fixtures -
Limitation. No state banking association shall invest in a banking
facility and in furniture and fixtures used in such banking
facility, an amount which will exceed the amount of the capital
stock of such bank more than one hundred percent of the amount of
its unimpaired capital stock and surplus in a banking facility,
furniture, and fixtures without the approval of the state banking
board.

Approved March 22, 1985

CHAPTER 119

HOUSE BILL NO. 1372
(Wald)

SALE OF CERTIFICATES OF DEPOSIT

AN ACT to create and enact a new section to chapter 6-03, a new section to chapter 6-05, a new section to chapter 6-06, and a new section to chapter 7-02 of the North Dakota Century Code, relating to the sale of certificates of deposit by banking institutions, the Bank of North Dakota, credit unions, and savings and loan associations; and to provide a penalty.

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

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 1, or as authorized under sections 2, 3, and 4 of this Act. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 2. A new section to chapter 6-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by the Bank of North Dakota, and by annuity, safe deposit, surety, and trust companies authorized to issue certificates of deposit and organized to do business in this state under this chapter or having federal deposit insurance corporation insurance of deposits, or as authorized by sections 1, 3, and 4 of this Act. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 3. A new section to chapter 6-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 1, 2, and 4 of this Act. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 4. A new section to chapter 7-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 1, 2, and 3 of this Act. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

Approved March 27, 1985

CHAPTER 120

SENATE BILL NO. 2128
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK SHAREHOLDER LISTS

AN ACT to amend and reenact section 6-03-27 of the North Dakota Century Code, relating to lists of shareholders for banking institutions.

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

SECTION 1. AMENDMENT. Section 6-03-27 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-27. List of shareholders to be kept and filed.

1. The president or cashier of every banking ~~association~~ institution formed pursuant to the provisions of this title, at all times, shall keep a true and correct list of the names and post-office addresses of all shareholders of such ~~association~~ banking institution, with the amount of stock held by each, the date of transfer, and to whom transferred, which list shall be verified on the thirty-first day of December of each year. A copy of ~~such~~ the verified list shall be filed in the office of the commissioner on the same date.
2. Whenever a change in control occurs, a letter indicating the parties involved in the change, the amount of the stock, the date of the transfer, and to whom transferred shall be forwarded to the commissioner within ten days of such change. For purposes of this subsection "control" ~~shall mean the power, means owning or controlling~~ directly or indirectly, to direct the management or policies of the banking association or by acting through one or more persons, of the power to vote twenty-five percent or more of any class of voting securities of the banking association or banking institution, controlling in any manner the election of a majority of the directors of the association or banking institution, or directing the management or policies of the association or banking institution.

Approved March 22, 1985

CHAPTER 121

SENATE BILL NO. 2125
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK LOANS ON SHARES

AN ACT to amend and reenact section 6-03-33 of the North Dakota Century Code, relating to bank loans on security of the shares of the bank's stock or the stock of a holding company which controls the bank.

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

SECTION 1. AMENDMENT. Section 6-03-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-33. Loans on shares prohibited - Disposal of stock acquired. No association or banking institution shall make any loan or discount on the security of the shares of its own stock, or of the stock of any holding company which controls the association or banking institution, nor be a purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so acquired shall be sold or disposed of at public or private sale within thirty days after it is acquired, and if not sold within such time, it shall be canceled and deducted from the capital stock of the association, banking institution, or holding company, and the association, banking institution, or holding company shall notify the state ~~examiner~~ commissioner in writing of such cancellation. For the purpose of this section, "control" means ownership, or control directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting securities of the association or banking institution, of the power to control in any manner the election of a majority of the directors of the association or banking institution, or to direct the management or policies of the association or banking institution.

Approved March 22, 1985

CHAPTER 122

SENATE BILL NO. 2121
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

DIVIDEND PAYMENT PROHIBITION

AN ACT to amend and reenact section 6-03-36 of the North Dakota Century Code, relating to prohibition of payment of dividends by banking institutions under certain conditions.

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

SECTION 1. AMENDMENT. Section 6-03-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-36. Capital must be maintained - Dividends prohibited under certain conditions. No association and no officer thereof, while the association continues its banking operations, shall withdraw or permit to be withdrawn any portion of its capital in the form of dividends or otherwise. If losses have been sustained at any time by an association in an amount equal to or exceeding its undivided profits then on hand, no dividend shall be made, and no dividend shall be made by any association in an amount greater than its net profits on hand after its losses and bad debts have been deducted therefrom. All debts due to an association made or continued in violation of any of the provisions of this title shall be considered bad debts within the meaning of this section, and the state banking board shall ascertain and designate such bad debts, and shall make and enforce any orders and institute any proceedings necessary to dispose of the same or to convert them into good assets.

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. No dividend may be paid in an amount which exceeds the total of the association's net profits for the year combined with its retained net profits for the preceding two years less any required transfers to surplus or a fund for the retirement of any preferred stock, capital notes, or debentures, without the approval of the state banking board.

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, and all federal and state taxes.

Approved March 22, 1985

CHAPTER 123

SENATE BILL NO. 2126
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and Financial Institutions)

BANKING BOARD POWERS

AN ACT to amend and reenact section 6-03-38 of the North Dakota Century Code, relating to the power of the state banking board to authorize activities for state chartered banks.

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

SECTION 1. AMENDMENT. Section 6-03-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-38. Assets not to be used in other business - Exceptions - Penalty. No bank, except as otherwise authorized in this title, shall employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor shall it employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm, or association, provided, however, that a state bank may to the extent that banks subject to the laws of the federal government are permitted to do so, purchase shares of stocks in small business investment companies organized under Public Law No. 85-699, 85th Congress, known as the Small Business Investment Act of 1958, and any amendments thereto, or chapter 10-30 of the North Dakota Century Code, but in no event shall any state bank hold shares in small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it shall be lawful for a bank to make advances for grain or other products in store or in transit to market, and to invest in stocks of subsidiary corporations, when the activities of such corporations are incidental to banking activities, with the specific approval of the state banking board for each such subsidiary. The state banking board shall have the same power to make rules and regulations for the subsidiary corporations, and to examine its records and affairs, as it has for other financial corporations under the provisions of section 6-01-04. In the event that the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition to the above, the state banking

board shall have power to ~~issue regulations authorizing~~ authorize state banks to engage in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this Code. Any officer, director, or employee of any bank who shall invest or use its funds contrary to the provisions of this title shall be guilty of a class A misdemeanor.

Approved March 22, 1985

CHAPTER 124

SENATE BILL NO. 2127
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and Financial Institutions)

BANK LOAN LIMITATIONS

AN ACT to amend and reenact section 6-03-59 of the North Dakota Century Code, relating to bank loan limitations; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 6-03-59 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-59. Loan limitation to one person borrower or concern. The total direct, indirect, or contingent liability of any person, corporation, company, or firm borrower to any state banking association shall not exceed at any time twenty-five percent of the unimpaired capital and surplus of such association. The liability of a firm shall include the liabilities of the several members thereof for money borrowed and on paper purchased by the association upon which they are liable as makers. For the purpose of this section the total liability of a borrower includes the liabilities of any separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. The discount of bills of exchange drawn in good faith against actual existing values, loans secured by bills of lading drawn against produce in transit, and loans secured by bonded warehouse receipts or elevator storage tickets covering produce actually in storage shall not be considered as money borrowed if all paper relating to such transactions is made payable to, and such paper and the security therefor remains in the possession and control of the association until the advance or debt is paid. An association may discount commercial or business paper actually owned by the person negotiating it without such discounting being deemed an addition to any loan made to the negotiator.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1986.

Approved March 27, 1985

CHAPTER 125

HOUSE BILL NO. 1125
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

CREDIT UNION POWERS

AN ACT to amend and reenact subsection 11 of section 6-06-06 of the North Dakota Century Code, relating to the powers of state chartered credit unions.

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

SECTION 1. AMENDMENT. Subsection 11 of section 6-06-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. The state credit union board may authorize credit Credit unions to may engage in any activity in which they could engage if they were federally chartered.

Approved March 14, 1985

CHAPTER 126

SENATE BILL NO. 2129
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

FINANCIAL INSTITUTION SALE NOTICE

AN ACT to amend and reenact section 6-08-08.1 of the North Dakota Century Code, relating to notices of changes in control of associations, banking institutions, and their holding companies.

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

SECTION 1. AMENDMENT. Section 6-08-08.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-08.1. Sale or purchase of associations, banking institutions, or holding companies - Notification to commissioner - Hearing.

1. No person, acting directly or indirectly or through or in concert with one or more other persons, shall sell or otherwise dispose of an association, or banking institution, or purchase or otherwise acquire control of a an association or banking institution without notifying unless the state banking board has been given at least sixty days prior written notice of the proposed disposition or acquisition. The written notice shall include such information as the state banking board shall specify.
2. Within thirty days after the date of mailing the notification, the transaction shall be deemed approved, unless the board issues an order calling a hearing. If a hearing is called by the board, the parties to the transaction shall be given at least a ten-day written notice of the time, date, and place of the hearing, to be held before the board, to examine into the following matters:

- a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers.
- b. Whether the qualifications of management include adequate experience with financial institutions or other approved related experience.
- c. Whether the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.

The determination to call a hearing may be made by the commissioner after consulting the board members and an order calling a hearing may be issued by the board without a formal meeting.

3. If the evidence produced at the hearing establishes that the character, reputation, general fitness, financial standing, and responsibility of the persons proposed as stockholders, directors, or officers is such that the interests of other stockholders, depositors, creditors, and the general public might be jeopardized by the change in control and management, then the board, within ~~five~~ ten business days of the date of the hearing, shall issue its order disapproving the transaction and shall notify the parties ~~thereto~~. If no order is issued within ten business days after the hearing is held, the transaction is deemed approved by the board. Any decision of the board shall be reviewable under the provisions of chapter 28-32.
4. For purposes of this section, "control" means ~~the direct or indirect ownership of, or control of, or directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares at the election of directors of the securities of an association, banking institution, controlling holding company, or the direct or indirect power to control in any manner the election of a majority of the directors of an association or one bank holding company, banking institution, or to direct the management or policies of an association or banking institution, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. "Holding company" means any partnership, corporation, business trust, association, or entity or organization of any type which controls an association or banking institution.~~

Approved March 22, 1985

CHAPTER 127

HOUSE BILL NO. 1072
(Legislative Council)
(Interim Judiciary "B" Committee)

DISHONORED CHECKS

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to issuing checks with insufficient funds or without an account; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 6-08-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.

1. A person may not, for himself, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of such making, drawing, uttering, or delivery, or at the time of presentation for payment if made within one week after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is a class B misdemeanor.
2. The person is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder of the check, draft, or order.
- ~~2-~~ ~~If full payment of the instrument and collection fees is not made within ten days from receipt of the notice of dishonor,~~ 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.

- 3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.
- 4. A notice of dishonor must may be sent mailed by the holder of the check upon dishonor, prior to the institution of a criminal proceeding, the. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice to 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 dollars. ~~Payment to holder of the face amount of the instrument, plus any collection fees or costs, not exceeding the additional sum of ten dollars, shall constitute a defense to a criminal charge brought hereunder if paid within ten days from receipt of this notice of dishonor. If payment of the above amounts is not made within ten days from receipt of this notice of dishonor, a civil penalty of the lesser of one hundred dollars or three times the amount of the instrument will be assessed.~~

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.

- 5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution ~~if the issuer does not pay to the holder sufficient moneys to pay the check within ten days~~

from receipt of the notice. The criminal complaint for the offense of issuing a check, draft, or money order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time shall ~~be~~ bars the criminal charge under this section.

* SECTION 2. AMENDMENT. Section 6-08-16.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for himself 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 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 one week 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 dollars, which are recoverable by civil action by the holder of the instrument. ~~If full payment of the instrument and collection fees is not made within ten days from receipt of the notice of dishonor, a~~ A civil penalty is also recoverable by civil action by the

* NOTE: Section 6-08-16.2 was also amended by section 1 of Senate Bill No. 2355, chapter 128.

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.

- 3. The fact that payment has been refused by a drawee because of insufficient funds or because the drawer has no account with the drawee from which payment could legally be made constitutes an inference of intent to defraud.
- 4. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution ~~if the issuer does not pay to the holder sufficient moneys to pay the check within ten days from receipt of the notice of dishonor.~~ A criminal complaint for violation of subdivision b of subsection 2 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. Failure to execute a complaint within the time set forth in this subsection ~~shall constitute a bar to bars~~ any criminal charges under subdivision b of subsection 2.
- 5. A notice of dishonor ~~must~~ may be sent 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) (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 dollars. ~~Payment to holder of the face amount of the instrument, plus any collection fees or costs, not exceeding the additional sum of ten dollars, shall constitute a defense to a criminal charge brought hereunder if paid within ten days from receipt of this notice of dishonor. If payment of the above amounts is not made within ten days from receipt of the notice of dishonor, a~~

civil penalty of the lesser of one hundred dollars or three times the amount of the instrument will be assessed.

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.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 128

SENATE BILL NO. 2355
(Senators D. Meyer, Maixner)
(Representatives R. Anderson, Knudson, Vander Vorst)

NSF CHECK PENALTY

AN ACT to amend and reenact section 6-08-16.2 of the North Dakota Century Code, relating to issuing checks with insufficient funds or without an account; and to provide a penalty.

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

* SECTION 1. AMENDMENT. Section 6-08-16.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for himself 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

* NOTE: Section 6-08-16.2 was also amended by section 2 of House Bill No. 1072, chapter 127.

b. At the time of issuing the instrument with intent to defraud, or at the time of presentation for payment if made within ~~one week~~ 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 dollars, which are recoverable by civil action by the holder of the instrument.

3. A person who, for himself or an agent or representative of another, willfully as defined in 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 dollars, which are recoverable by civil action by the holder of the instrument.

4. If full payment of the instrument and collection fees is not made within ten days from receipt of the notice of dishonor, a civil penalty is recoverable by civil action by the holder of the ~~check, draft, or order~~ instrument. 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.

3- 5. The fact that payment has been refused by a drawee because of insufficient funds or because the drawer has no account with the drawee from which payment could legally be made constitutes an inference of intent to defraud.

4- 6. An agent acting for the receiver of a ~~check~~ instrument issued in violation of this section may present the ~~check~~ instrument to the state's attorney for prosecution ~~if the issuer does not pay to the holder sufficient moneys to pay the check within ten days from receipt of the notice of dishonor~~. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the

drawer of the instrument receives notice, from the holder, of nonpayment. Failure to execute a complaint within the time set forth in this subsection shall constitute a bar to bars any criminal charges under subdivision b of subsection 2 or subdivision b of subsection 3.

- 5- 7. A notice of dishonor must may be sent by the holder of the check instrument upon dishonor. 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) (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 dollars. Payment to holder of the

face amount of the instrument, plus any collection

fees or costs, not exceeding the additional sum of

ten dollars, shall constitute a defense to a

criminal charge brought hereunder if paid within

ten days from receipt of this notice of dishonor.

If payment of the above amounts is not made within

ten days from receipt of the notice of dishonor, a

civil penalty of the lesser of one hundred dollars

or three times the amount of the instrument will

be assessed.

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 11, 1985

CHAPTER 129

SENATE BILL NO. 2386
(Parker)

BANK CUSTOMER RECORDS DISCLOSURE

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the disclosure of customer financial institution records; and to provide a penalty.

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

SECTION 1. A new chapter to title 6 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter:

1. "Customer" means any person who has transacted or is transacting business with, or has used or is using the services of, a financial institution, or for whom a financial institution has acted as a fiduciary with respect to trust property.
2. "Customer information" means either of the following:
 - a. Any original or any copy of any records held by a financial institution pertaining to a customer's relationship with the financial institution.
 - b. Any information derived from a record described in this subsection.
3. "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.
4. "Financial institution regulatory agency" means any of the following:
 - a. The federal deposit insurance corporation.

- b. The federal savings and loan insurance corporation.
 - c. The national credit union administration.
 - d. The federal reserve board.
 - e. The United States comptroller of the currency.
 - f. The department of banking and financial institutions.
 - g. The federal home loan bank board.
5. "Governmental agency" means any agency or department of this state, or any authorized officer, employee, or agent of an agency or department of this state.
 6. "Law enforcement agency" means any agency or department of this state or of any political subdivision of this state authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
 7. "Person" means any individual, partnership, corporation, association, trust, or other legal entity.

Exemptions. This chapter does not apply to any of the following:

1. The preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or the examination of such information by an accountant engaged by the financial institution to perform an audit.
2. The examination of any customer information by, or the furnishing of customer information to, any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of his duties.
3. The publication of data derived from customer information where the data cannot be identified to any particular customer or account.
4. Any acts required of the financial institution by the Internal Revenue Code.
5. Disclosures permitted under the uniform commercial code concerning the dishonor of any negotiable instrument.
6. The exchange in the regular course of business of customer credit information between a financial institution and other financial institutions or commercial entities, directly, or through a customer reporting agency.

7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of either of the following:
 - a. The name of any person who, either directly or indirectly, has obtained financing through the Bank of North Dakota.
 - b. The amount of any financing obtained either directly or indirectly through the Bank of North Dakota.
8. An examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.

Duty of confidentiality. A financial institution may not disclose customer information to any person, governmental agency or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this Act.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this Act.
4. For the purpose of reporting a suspected violation of the law in accordance with this Act.

Consent.

1. No consent or waiver shall be required as a condition of doing business with any financial institution, and any consent or waiver obtained from a customer as a condition of doing business with a financial institution shall not be deemed a consent of the customer for the purpose of this Act.
2. A valid consent must be in writing and signed by the customer. In consenting to disclosure of customer information, a customer may specify any of the following:
 - a. The time during which such consent will operate.
 - b. The customer information to be disclosed.
 - c. The persons, governmental agencies or law enforcement agencies to which disclosure may be made.

Government access.

1. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to either of the following:
 - a. The consent of the customer, in accordance with this Act.
 - b. Valid legal process, in accordance with this section.
2. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a judicial or administrative subpoena duces tecum served on the financial institution, if all of the following are met:
 - a. There is reason to believe that the customer information sought is relevant to a proper law enforcement objective or is otherwise authorized by law.
 - b. A copy of the subpoena has been personally served on the customer, or his legal representative, or has been mailed to the customer or his legal representative at his last-known address on or before the date of the subpoena, together with a notice that describes the nature of the inquiry, the specific customer information sought, and a description of the customer's right to challenge the subpoena pursuant to this Act.
 - c. Ten days have passed from the date of personal service of the subpoena on the customer or his legal representative, or fourteen days have passed from the date the subpoena was mailed to the customer or his legal representative, and the customer has not exercised his right to challenge the subpoena pursuant to this section.
3. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a search warrant if it obtains the search warrant pursuant to the rules of criminal procedure of this state. Examination of the customer information may occur as soon as it is reasonably practicable after the warrant is served on the financial institution. The law enforcement agency or governmental agency must mail a copy of the warrant and a notice specifying the nature of the information obtained to the customer or his legal representative within thirty days of the time the financial institution complies with the search warrant. A court of competent jurisdiction may delay the notice requirement as provided for in this section. In no event

may notification be delayed for more than one year following the seizure pursuant to the search warrant.

4. a. Within ten days of personal service of the judicial or administrative subpoena upon the bank and the customer or his legal representative, or fourteen days from the date of the subpoena if the subpoena is mailed to the customer or his legal representative, the customer may file a motion to quash the subpoena, with copies of the motion to quash served on the governmental agency or law enforcement agency and on the financial institution. If the subpoena issues from a court, the motion should be filed in that court. If the subpoena issues from a governmental agency or law enforcement agency, the motion shall be filed in a court of competent jurisdiction. The financial institution shall not disclose the information until the motion has been heard and decided.
- b. The motion shall be accompanied by an affidavit stating both of the following:
 - (1) The applicant is the customer about whom the customer information pertains.
 - (2) The applicant's reasons for believing that the material sought is not relevant to a legitimate law enforcement objective or is not otherwise authorized by law.
- c. During the period for filing the motion to quash, and continuing until the final ruling on the motion, upon the customer's request, the financial institution shall supply the customer with a copy of the customer information sought.
- d. The judge or magistrate shall grant the motion if either of the following is met:
 - (1) The information sought is not relevant to a legitimate law enforcement objective or is not otherwise authorized by law.
 - (2) There has not been substantial compliance with the provisions of this Act.
5. a. Upon petition of the governmental agency or law enforcement agency, the customer notice requirements of this Act may be delayed by a court of competent jurisdiction if all of the following are met:
 - (1) The investigation conducted is within the authority of the governmental agency or law enforcement agency.

- (2) The disclosure sought is pursuant to a proper law enforcement objective or is otherwise authorized by law.
 - (3) The provision of notice to the customer would seriously impede the investigatory process.
- b. Notice may be delayed under this subsection for no more than thirty days. Upon application of the governmental agency or law enforcement agency, notice may be delayed for two additional thirty-day periods.
 - c. When the court grants the petition to delay notice, a copy of the court order shall be attached to the summons or subpoena and served on the financial institution.

Suspicion of unlawful conduct.

1. Nothing in this Act precludes a financial institution from initiating contact with, and thereafter communicating with and disclosing customer information to, a law enforcement agency when the financial institution reasonably believes that the customer about whom such information pertains:
 - a. Is engaged in unlawful activity; or,
 - b. Is defrauding the financial institution.
2. Conviction of the customer or admission by the customer shall be conclusive of the reasonableness of the disclosure for purposes of this section.
3. The burden is on the financial institution to show that at the time the disclosure was made, the disclosure was reasonable for the purposes of this section.

Cost reimbursement. Any governmental agency, law enforcement agency or person requiring or requesting access to customer information shall pay to the financial institution that assembles or provides the customer information a fee for reimbursement of reasonably necessary costs which have been directly incurred by the financial institution.

Liability.

1. A financial institution, governmental agency, law enforcement agency, or any other person is liable to the customer for intentional violations of this Act in an amount equal to the greater of the following:
 - a. One thousand dollars.
 - b. Actual damages caused by the disclosure of the customer information.
2. Any financial institution, governmental agency, law enforcement agency or other person that takes any action pursuant to this Act, relying in good faith on any provision of this Act, may not be held liable to any

CHAPTER 130

SENATE BILL NO. 2196
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

EXPORT TRADING COMPANY STOCK PURCHASE

AN ACT to provide for the purchase of stock in an export trading company by the Bank of North Dakota.

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

SECTION 1. Bank of North Dakota purchase of export trading company stock - Limitation. The Bank of North Dakota may invest in an export trading company organized and doing business in this state through the purchase of shares of stock, except that all investments in such stock shall not exceed two percent of the Bank's consolidated capital and surplus.

Approved March 28, 1985

CHAPTER 131

SENATE BILL NO. 2207
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

BANK RECORDS CONFIDENTIALITY

AN ACT to create and enact a new subsection to section 6-09-35 of the North Dakota Century Code, relating to the confidentiality of Bank records.

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

SECTION 1. A new subsection to section 6-09-35 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The report by a Bank officer or member of the Bank's advisory board of directors concerning personal financial statements.

Approved March 22, 1985

CHAPTER 132

SENATE BILL NO. 2451
(Holmberg)

MUNICIPAL SECURITY DEFINED

AN ACT to amend and reenact subsection 5 of section 6-09.4-03 of the North Dakota Century Code, relating to the definition of a municipal security; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 5 of section 6-09.4-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Municipal security" means a bond or evidence of debt issued by a political subdivision and payable from taxes or from rates, charges, ~~or~~ assessments, or distributions of revenue pursuant to a state appropriation or statutory or constitutional provision or under currently existing contracts of the bureau of Indian affairs, but does not include bonds issued pursuant to chapter 40-57, and also means a pledge of property or revenues by a municipal pipeline authority.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 29, 1985

CHAPTER 133

SENATE BILL NO. 2191
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

MUNICIPAL BOND BANK RESERVE FUND

AN ACT to create and enact a new subsection to section 6-09.4-10 of the North Dakota Century Code, relating to the requirements of the reserve fund for the North Dakota municipal bond bank; to amend and reenact subsection 2 of section 6-09.4-10 of the North Dakota Century Code, relating to the requirements of the reserve fund for the North Dakota municipal bond bank; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 2 of section 6-09.4-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Moneys in said fund at any time in excess of the required debt service reserve or in excess of the amount permissible under the Internal Revenue Code may be withdrawn at any time by the bond bank and transferred to any other fund or account of the bond bank. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the bonds to be taxable under the Internal Revenue Code, then at the discretion of the bond bank no reserve fund need be established prior to the issuance of bonds or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.

SECTION 2. A new subsection to section 6-09.4-10 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

If the maturity of a series of bonds of the bond bank is three years or less from the date of issuance of the bonds, the bond bank may determine that no reserve fund need be established for that respective series of bonds. If such a determination is made, holders of that respective series of bonds shall have no interest in or claim on existing reserve funds established for the security of the holders of previously issued bond bank bonds, and shall have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the bond bank.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 134

SENATE BILL NO. 2249
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

DEVELOPMENTALLY DISABLED FACILITY LOAN
FUND

AN ACT authorizing a developmentally disabled facility loan fund program for the establishment by nonprofit corporations of facilities for the developmentally disabled, chronically mentally ill, and physically disabled persons; authorizing the board of university and school lands to invest in a developmentally disabled facility loan fund program; to create and enact a new chapter to title 25 of the North Dakota Century Code, relating to appointment of receivers for facilities for developmentally disabled clients; to amend and reenact section 6-09.6-03 of the North Dakota Century Code, relating to the amount, terms, and conditions of the loans made under the developmentally disabled facility loan fund; and to provide an appropriation.

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

SECTION 1. Developmentally disabled facility loan program no. 3. There is hereby created a developmentally disabled facility loan fund program no. 3 for the purpose of making loans to nonprofit corporations, organized in the localities in which facilities are proposed to be located, for project costs, including the cost of real estate, construction, reconstruction, acquisition, furnishings, and equipment, and administrative costs related to the establishment thereof, of facilities for developmentally disabled, chronically mentally ill, and physically disabled persons. The loan fund may borrow an amount not to exceed \$4,951,145 from the common school trust fund to finance the program. The loan fund program shall be administered by the Bank of North Dakota in the same manner the Bank administers the program established by section 6-09.6-01 and 6-09.6-02 through 6-09.6-05, except that all payments of principal and interest shall be credited by the Bank to the lands and minerals trust fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

SECTION 2. Loan authority. The board of university and school lands is hereby authorized to invest in an amount not to

exceed \$4,951,145 from the common school trust fund in the developmentally disabled facility loan fund program no. 3. The term of this investment may not exceed twenty-five years and the rate of interest may not exceed twelve percent. The common school trust fund shall have a security interest in the properties of the lands and minerals trust fund in the amount of the loan.

SECTION 3. AMENDMENT. Section 6-09.6-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.6-03. Amount of loan - Terms and conditions. Loans in an amount not exceeding three-fourths of project costs, including the cost of construction, reconstruction, acquisition, furnishings, equipment, and administrative cost related to the establishment of the project, and the cost or value of real estate upon which the facility is located, shall be made by the Bank of North Dakota from the fund maintained pursuant to ~~section~~ sections 6-09.6-01, 6-09.6-01.1, and section 1 of this Act. Such loans shall bear interest at a rate of ~~five~~ ten and one-half percent for loans relating to facilities for developmentally disabled persons and five percent for loans relating to facilities for physically disabled persons and chronically mentally ill persons, and shall be repayable in the manner prescribed by the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of a loan under this chapter, each nonprofit corporation shall execute a contract with the state to operate the facility in accordance with the standards prescribed for the licensing of the facility by the state department of human services. The contract shall also provide that if the use of the facility is discontinued or diverted to purposes other than those proposed in the loan application without the express consent of the state department of human services, the full amount of the loan provided under this chapter shall immediately become due and payable. The Bank of North Dakota may annually deduct, as a service fee for administering the revolving fund maintained under section 6-09.6-01, one-half of one percent of the principal balance of the outstanding loans from the revolving fund as a service fee for administering the revolving fund. Payments of interest and principal on loans made under ~~this chapter~~ section 6-09.6-01 shall be made to the Bank of North Dakota and credited to the revolving fund. Payments of principal and interest on loans made under section 6-09.6-01.1 and section 1 of this Act shall be credited by the Bank to the lands and minerals trust fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

SECTION 4. A new chapter to title 25 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.

2. "Treatment or care center" means any hospital, home, or other premises, operated to provide relief, care, custody, treatment, day activity, work activity, or extended employment services to developmentally disabled persons.

Conditions for appointment of receiver. When the department has revoked the license of a treatment or care center, or when the operator of a center has requested, the department may file a petition with the district court to place the center under the control of a receiver if necessary to protect the health or safety of clients at the center. The court may grant the petition upon a finding that the health or safety of the clients at the center would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue. Such a finding may be based upon evidence concerning the physical plant, the program and services offered by the center, but not solely upon evidence that a center:

1. Has been denied a license to operate as a center, or has had a previously issued license revoked; or
2. Has been denied certification as an intermediate care facility for the mentally retarded, or has lost or had revoked such certification.

Appointment of receiver. The court shall appoint as receiver the executive director of the department who shall designate a qualified individual not employed by this state or its political subdivisions, or a nonprofit organization to execute the receivership. The receiver appointed by the court shall use the income and assets of the treatment or care center to maintain and operate the center and to attempt to correct the conditions which constitute a threat to the clients. The receiver may not liquidate the assets of the treatment or care center.

Termination of receivership. The receivership shall be terminated when the receiver and the court certify that the conditions which prompted the appointment have been corrected, when the license is restored, when a new license is issued, or, in the case of an election by the owner or owners to discontinue operation, when the clients are safely placed or provided services in other centers.

Accounting. Upon the termination of the receivership, the receiver shall render a complete accounting to the court and shall dispose of surplus funds as the court directs.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the lands and minerals trust fund, not otherwise appropriated, the sum of \$400,000 or so much thereof as may be necessary, for the purpose of making payments of principal and interest to the common school trust fund on any loans made from it pursuant to section 1 of this Act, for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 16, 1985

CHAPTER 135

HOUSE BILL NO. 1043
(Legislative Council)
(Interim Agriculture Committee)

BEGINNING FARMER LOAN PROGRAM

AN ACT to amend and reenact sections 6-09-15.5, 6-09.8-01, 6-09.8-04, 6-09.8-06, subdivision m of subsection 1 of section 57-38-01.2, and section 57-38-67 of the North Dakota Century Code, relating to beginning farmer programs, loan guarantees, loan funds, and tax exemptions; to provide an appropriation; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 6-09-15.5 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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, as defined under subsection 2 of section 57-38-67, 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 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 ~~thirty-five~~ fifty 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. A loan must bear interest at a rate as determined by the Bank, which may vary from loan to loan and which may be below the market rate. The term of a loan may not exceed forty years. The Bank may do all things and acts, may take such security, and may establish additional terms and conditions as deemed necessary to make a loan under the provisions of this section. The Bank may take a second 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.

4. A loan made from the fund must bear interest at a maximum rate of four percent per year for the first ten years of the loan and at a rate of six percent per year after ten years.
5. The maximum term of the loan is ten years unless at the end of the ten-year term the commissioner of agriculture extends the loan for a five-year period.

SECTION 2. AMENDMENT. Section 6-09.8-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.8-01. Definitions. As used in this chapter, unless the context or subject matter requires otherwise:

1. "Beginning farmer" means a person who qualifies as a beginning farmer under subsection 2 of section 57-38-67.
2. "Lender" means any lending institution which is regulated or funded under the laws of ~~North Dakota~~ this state or the United States and which has provided financing to a beginning farmer for the purchase of farm real estate qualified agricultural property.
3. "Loan guarantee" means an agreement that in the event of default by a beginning farmer under a contract for deed ~~or~~ a note and mortgage, or other loan or financing agreement, the Bank shall pay the seller or lender ninety percent of the amount of principal due the seller or lender on a real estate transaction and up to fifty percent of the amount of principal due the seller or lender on a personal property loan at the time the claim is approved from the loan guarantee fund.
4. "Qualified agricultural property" means real estate or depreciable personal property used in the production of agricultural products. Depreciable personal property means personal property that may be depreciated under generally accepted accounting principles and is designed for use in more than one production year.

5. "Seller" means any person, association, partnership, or corporation which has provided financing to a beginning farmer for the purchase of farm real estate qualified agricultural property or which has entered into a contract for deed with a beginning farmer for the sale and purchase of farm agricultural real estate.

SECTION 3. AMENDMENT. Section 6-09.8-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.8-04. Application for guarantee. Any lender or seller may apply to the Bank for a loan guarantee. A loan guarantee shall not be approved if the purchase price of the farm real estate qualified agricultural property exceeds its appraisal value for real estate, or its fair market value for all other property. Guarantees for depreciable personal property loans may only be given for loans made under chapter 4-36.

SECTION 4. AMENDMENT. Section 6-09.8-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.8-06. Termination. A loan guarantee may be terminated by the Bank upon the sale, exchange, assignment, or transfer of the beginning farmer's interest in the farm real estate qualified agricultural property and shall must be terminated if the Bank determines that the loan guarantee was obtained by fraud or material misrepresentation of which the lender or seller has actual knowledge.

SECTION 5. AMENDMENT. Subdivision m of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- m. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a notarized statement from the buyer certifying that he the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer shall must be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person,

including ~~his~~ the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings ~~shall~~ may not be included. This statement ~~shall~~ must be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who is:

- (1) ~~is a~~ A resident of this state-;
- (2) ~~Receives~~ Receiving more than half ~~his~~ of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision-;
- (3) ~~Intends~~ Intending to use any farmland ~~that he wishes to purchase or rent to be purchased or rented~~ for agricultural purposes-;
- (4) ~~Has had~~ Except for contracts for deed entered into prior to July 1, 1985, having adequate training, ~~by experience or education,~~ in the type of farming operation which ~~he the person~~ the person wishes to begin- through satisfactory participation in the adult farm management education program of the state board of vocational education or an equivalent program approved by the commissioner of agriculture; and
- (5) ~~Has~~ Having, including the net worth of ~~his~~ any dependents and spouse, ~~if any,~~ a net worth of less than one hundred thousand dollars.

SECTION 6. AMENDMENT. Section 57-38-67 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-67. Definitions applicable to sections 57-38-67 through 57-38-70. As used in sections 57-38-67 through 57-38-70, unless the context otherwise requires:

1. "Agricultural purposes" means production of agricultural crops, livestock or livestock products, poultry or poultry products, and fruit or other horticultural crops.
2. "Beginning farmer" means any person who is:
 - a. ~~is a~~ A resident of this state-;
 - b. ~~Receives~~ Receiving more than half ~~his~~ of that person's gross annual income from farming, unless the person

initially commences farming during the tax year for which a deduction will be claimed under sections 57-38-67 through 57-38-70-;

- c. Intends Intending to use any farmland that he wishes to purchase or rent to be purchased or rented for agricultural purposes-;
 - d. Has had Except for tax-exempt transactions entered into prior to July 1, 1985, having adequate training, by experience or education, in the type of farming operation which he the person wishes to begin on the purchased or rented land referred to in subdivision c- through satisfactory participation in the adult farm management education program of the state board of vocational education or an equivalent program approved by the commissioner of agriculture; and
 - e. Has Having, including his the net worth of any dependents and spouse, if any, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.
3. "Landowner" means any individual, partnership, trust, or estate owning land in North Dakota, except that any individual, partnership, trust, or estate that acquires such land for the purpose of obtaining the income tax deduction provided for in sections 57-38-67 through 57-38-70 shall are not be deemed to be a landowner.

SECTION 7. APPROPRIATION. There is hereby appropriated all moneys remaining in the beginning farmer loan guarantee fund created by section 6-09.8-03 as of the effective date of this Act, to the beginning farmer revolving loan fund established under section 6-09-15.5. The Bank of North Dakota shall make such transfers as are necessary to implement this section.

SECTION 8. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 136

HOUSE BILL NO. 1404
(Representatives Nicholas, O. Hanson, Nowatzki)
(Senators Thane, W. Meyer, Tweten)

FAMILY FARM SURVIVAL ACT

AN ACT to adopt the Family Farm Survival Act of 1985 and to provide participation in short-term loans to farmers and agribusinesses; to create and enact a new section to chapter 4-36 of the North Dakota Century Code, relating to a bond reserve fund; to amend and reenact section 4-36-03, subsection 6 of section 4-36-04, sections 4-36-06, 4-36-07, 4-36-08, 4-36-12, 4-36-24, and 4-36-25 of the North Dakota Century Code, relating to the Agricultural Development Act; to provide appropriations; and to declare an emergency.

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

SECTION 1. Short title. This Act may be known as the Family Farm Survival Act of 1985.

SECTION 2. Definitions. In sections 1 through 7 of this Act, unless the context or subject matter otherwise requires:

1. "Agribusiness" means a locally owned business operation, located within this state, which is primarily engaged in providing services, materials, or equipment for the production, processing or transportation of agriculture products.
2. "Farmer" means a resident of this state who owns or operates an existing farm or ranch operation, and has a debt-to-asset ratio of fifty percent or greater or has suffered some form of unavoidable natural or financial hardship in at least one of the past four years.
3. "Operating loan" means a loan or extension of credit with a term of one year or less made by a nongovernmental financial institution to a farmer or agribusiness for the operation of an existing farm or ranch operation or agribusiness. An operating loan includes a farmer's home administration or small business administration subordinated operating loan and guaranteed operating loan,

and may be further defined by rule of the industrial commission.

SECTION 3. Operating loans - Participation by the Bank of North Dakota.

1. The Bank of North Dakota shall make available an appropriate amount of funds to purchase participation interests in operating loans to farmers and agribusinesses. Interest charged on a participation interest purchased by the Bank under this section may not exceed eight percent per annum, plus necessary and reasonable fees as determined by the industrial commission.
2. The amount of a participation interest purchased by the Bank under this section may not be greater than sixty-five percent of the loan amount or two hundred thousand dollars, whichever is less. The term of any participation interest purchased under this section may not exceed one year.
3. The Bank may not purchase a participation interest in a loan under this section until verification is received establishing that the farmer has obtained adequate crop or hail insurance which has been assigned to the primary lender, or that adequate insurance, as determined by the Bank, has been obtained by the agribusiness.

SECTION 4. Participation loans by private financial institutions.

1. The portion of the operating loan retained by a nongovernmental financial institution may not bear interest at an effective rate more than one and one-half percentage points per annum less than the interest rate computed and published monthly by the state commissioner of banking and financial institutions pursuant to section 47-14-09. The initial interest rate must be set on the date of the loan commitment and must be adjusted quarterly, based upon the last published interest rate computed by the commissioner.
2. All participation interests purchased are subject to the review and approval of the Bank.
3. The full amount of a loan qualifying for participation must be evidenced by one master note drawn by the financial institution to reflect both interest rates and to provide a schedule of payments to the financial institution and the Bank of North Dakota based upon pro rata shares of the loan participation.

SECTION 5. Interest buydown.

1. There is hereby established an interest rate buydown fund to be maintained by the industrial commission at the Bank of North Dakota.
2. The industrial commission may buydown or reduce the interest paid by a farmer or agribusiness on the Bank's portion of the participation operating loans by up to an additional five percentage points a year below the amount provided in section 3 of this Act.
3. Any interest buydown provided under this section must be repaid by the farmer or agribusiness not later than July 1, 1991, under terms approved by the Bank of North Dakota and pursuant to rules adopted by the industrial commission. Money collected under this subsection must be deposited in the fire and tornado fund in the state treasury.

SECTION 6. Agribusinesses. Not more than twenty percent of all participation interests purchased by the Bank of North Dakota under sections 1 through 7 of this Act may be in loans for agribusinesses.

SECTION 7. Rules. The industrial commission may adopt such rules and guidelines as are necessary to implement sections 1 through 6 of this Act.

* SECTION 8. AMENDMENT. Section 4-36-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-03. Terms defined. As used in this chapter, unless the context otherwise requires:

1. "Agriculture or agricultural enterprise" means and includes, but is not limited to, the real and personal property constituting farms, ranches, and other agricultural commodity producers; agriculturally related sewage, liquid and solid waste collection, disposal, treatment, and drainage services, and facilities; and agriculturally related antipollution and air, water, ground, and subsurface pollution abatement and control facilities and services.
2. "Bonds" means any bonds, notes, debentures, interim certificates, bond, grant and revenue anticipation notes, or any other evidences of indebtedness.
3. "Commission" means the industrial commission of North Dakota created pursuant to section 54-17-01.
4. "Contracting party" means any party to a lease, sales contract, or loan agreement except the commission.

* NOTE: Section 4-36-03 was also amended by section 1 of Senate Bill No. 2495, chapter 105.

5. "Lender" means any federal or state chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, small business investment company, or any other institution qualified within the state to originate and service loans, including, but not limited to, insurance companies, credit unions, and mortgage loan companies.
6. "Loan insurer" and "loan guarantor" mean an agency, department, administration, or instrumentality, corporate or otherwise, of or in the department of housing and urban development, the farmers home administration of the department of agriculture or the veterans administration of the United States of America, any private mortgage insurance company, or any other public or private agency which insures or guarantees loans.
7. "Operating loan" means an operating loan as defined under section 2 of this Act.
8. "State" means the state of North Dakota.

SECTION 9. AMENDMENT. Subsection 6 of section 4-36-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Enter into agreements with any department, agency, or instrumentality of the United States of America or this state and with lenders and enter into loan agreements with contracting parties for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise or an operating loan.

SECTION 10. AMENDMENT. Section 4-36-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-06. Commission - Loans to lenders - Conditions. The commission may make, and undertake commitments to make, loans to lenders under terms and conditions requiring the proceeds thereof to be used by such lenders to make operating loans and loans for agricultural enterprises. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker or other financial institution authorized to transact business in this state.

SECTION 11. AMENDMENT. Section 4-36-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-07. Commission - Invest in, purchase, or assign loans - Conditions. The commission may invest in, purchase, or make commitments to take

assignments of, operating loans and loans made by lenders for the construction, rehabilitation or purchase of agricultural enterprises. No loan shall be eligible for investment in, purchase, or assignment by the commission if the loan was made more than six months prior to the date of investment, purchase, or assignment by the commission.

SECTION 12. AMENDMENT. Section 4-36-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-08. Commission - Lender's requirements. Prior to exercising any of the powers authorized in sections 4-36-06 and 4-36-07, the commission shall require the lender to certify and agree that:

1. The loan is, or if the same has not been made will, at the time of making, be in all respects a prudent investment; and
2. Such lender will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase operating loans or loans to provide agricultural enterprises, or, if such lender has made a commitment to make operating loans or loans to provide agricultural enterprises on the basis of a commitment from the commission to purchase such loans, such lender will make such loans and sell the same to the commission within a reasonable period of time.

SECTION 13. AMENDMENT. Section 4-36-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-12. Commission - Bond issuance - Special obligations - How paid and secured. Bonds issued under this chapter shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the commission be subject to any liability thereon. Such bonds shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission, except those agricultural enterprises, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this chapter. The bonds may be additionally secured by a pledge of any grant, contribution, or guarantee from the federal government, the state, or any corporation, association, institution, or person.

SECTION 14. AMENDMENT. Section 4-36-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-24. Bank of North Dakota - Authorization to exercise administrative powers - Payment of commission expenses - Reimbursement - Liability of state or political subdivision. The commission may delegate to the Bank of North Dakota, and the Bank of North Dakota is hereby authorized to

exercise, all administrative powers granted to the commission under this chapter. The Bank of North Dakota is further authorized to advance from its funds the amount necessary to permit the commission to issue its first series of bonds under this chapter which shall be refunded to the Bank of North Dakota by the commission upon issuance of said bonds. Thereafter, all expenses incurred by the commission in carrying out the provisions of this chapter shall be payable solely from funds provided under this chapter, and nothing in this chapter shall be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of it.

SECTION 15. AMENDMENT. Section 4-36-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-25. Commission - Bonds exempt from taxation - Exception. All bonds issued under this chapter, interest payable thereon and income derived therefrom except inheritance, estate, and transfer taxes, shall at all times be exempt from all taxes imposed by this state, any county, any city, or any other political subdivision of this state. Bonds may be issued under this chapter whereby the interest on the bonds is subject to federal income taxation.

SECTION 16. A new section to chapter 4-36 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reserve fund.

1. The commission may establish and maintain a reserve fund and may deposit moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited in the fund by terms of any contracts between the commission and its bondholders or any resolution of the commission pertaining to proceeds of bonds, moneys or funds of the commission which it determines to deposit, and moneys made available to the commission for the purposes of the fund from any other source, and may transfer funds from the interest rate buydown fund established in section 5 of this Act. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as the payments become due and payable and for the retirement of bonds, including the payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity.
2. The commission may certify to the legislative assembly such amounts as are necessary to maintain the fund at a level necessary to secure the payment of the principal, premium, if any, and interest on its bonds.

SECTION 17. APPROPRIATION. There is hereby appropriated out of any moneys in the fire and tornado fund in the state treasury,

not otherwise appropriated, the sum of \$4,000,000, or so much thereof as may be necessary, to the interest rate buydown fund for the period beginning upon the effective date of this Act, and ending June 30, 1987. Upon expiration of this appropriation, the funds which remain in the interest rate buydown fund must be returned to the fire and tornado fund. Any interest generated from the interest rate buydown fund must be transferred to the fire and tornado fund upon expiration of this appropriation. The industrial commission shall by rule establish the priority of applications for interest rate buydowns under this Act, if appropriations are not sufficient to make loans to all applicants.

SECTION 18. APPROPRIATION. There is hereby appropriated out of any moneys in the fire and tornado fund in the state treasury, not otherwise appropriated, the sum of \$4,000,000, or so much thereof as may be necessary, to the extent that the fire and tornado fund balance does not drop below \$13,000,000, to the interest rate buydown fund for the period beginning July 1, 1986, and ending June 30, 1987. Upon expiration of this appropriation, the funds which remain in the interest rate buydown fund must be returned to the fire and tornado fund. Any interest generated from the interest rate buydown fund must be transferred to the fire and tornado fund upon expiration of this appropriation. The industrial commission shall by rule establish the priority of applications for interest rate buydowns under this Act, if appropriations are not sufficient to make loans to all applicants.

SECTION 19. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 137

HOUSE BILL NO. 1494
(Brokaw, Richard, W. Williams, Watne, Lloyd)

FARM CREDIT REVIEW BOARD

AN ACT to establish a farm foreclosure negotiation board and a home-quarter purchase fund; and to provide an appropriation.

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

SECTION 1. Definitions. As used in this Act, 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. "Farmer" means a person involved in the production of an agricultural commodity, as provided in paragraph 2 of subdivision b of subsection 15 of section 57-02-08.
4. "Fund" means the home-quarter purchase fund.
5. "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.

SECTION 2. Credit review board. The governor shall appoint three members of the credit review board. One member of the board must have experience serving as a director or officer of a financial institution. Two members of the board must have experience in the operation of a farm. No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board. The governor shall appoint members to terms of four years. The governor shall appoint one member to serve as chairman of the board.

SECTION 3. Powers - Compensation and expenses. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this Act. The board shall serve as a negotiator between a farmer who is in danger of immediate foreclosure or who has received a notice of foreclosure on a farm and has petitioned the board, and any lender who holds a valid mortgage upon the property. The board may hire staff, subject to appropriations, to serve as negotiators for the board. Board members are entitled to receive fifty 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 4. Petition - Negotiation.

1. Any farmer may petition the board for aid after receipt of a notice of foreclosure, or if the farmer is in danger of immediate foreclosure. Upon receipt of the petition, the board or its authorized agent shall enter into negotiations with the lender, on behalf of the farmer.
2. The board or its authorized agent shall negotiate with the lender in an attempt to extend the term of the loan, reduce the dollar amount of payments under the loan, or otherwise negotiate a settlement that will allow the farmer to reside in the farm residence and allow the farmer to continue to produce agricultural commodities. Any change in the terms of the mortgage must be approved by the lender and the farmer.

SECTION 5. Interest rate buydowns by the board.

1. If the board, or its authorized agent, is unable to mediate a settlement in the negotiation of a farmer's debt, the board may approve the purchase, refinancing, or redemption of the farmer's home-quarter. If the board approves the purchase, refinancing, or redemption of the home-quarter, it shall subsidize the interest rate paid by the farmer after credit has been obtained by the farmer from any governmental or private financial institution or agency.
2. The board may only approve an interest subsidy if the farmer has the financial ability to meet all payments and financial responsibilities, including the payment of principal and interest on loans subsidized under this Act.

SECTION 6. Fund - Appropriation.

1. A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases, as provided in this Act. All moneys transferred into the fund, interest upon moneys in the

fund, and payments to the fund are hereby appropriated for the purpose of providing subsidies in accordance with this Act.

2. The board may petition the emergency commission for a transfer from the state contingency fund whenever it appears to the board that the moneys remaining in the fund are not sufficient to meet demands on the fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, if it finds that an emergency situation exists in the industry of farming, due to increasing numbers of farm foreclosures.
3. 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 payments received on the fund.

SECTION 7. Interest rates - Repayment - Loan qualification. An interest subsidy may only be approved on the first fifty thousand dollars of principal loaned to the farmer for the purchase or refinancing of the home-quarter. For the first year after approval of any loan, the board shall subsidize ten percentage points per annum of the interest payments due from the farmer, not to exceed the amount of interest actually charged on the first fifty thousand dollars of principal. For the second and third years of the loan, the board shall subsidize six percentage points per annum of the interest payments due from the farmer, not to exceed the amount of interest actually charged on the first fifty thousand dollars of principal. The amount of any interest payments subsidized by the board must be added to the principal amount of the loan, and the lender shall repay this amount into the fund as it is repaid by the borrower. Loans approved by the board must be amortized and may have terms of up to forty years.

SECTION 8. Home-quarter - Appraised value The board shall determine the appraised value of home-quarters for the purposes of this Act. In determining appraised value, the board shall receive testimony, from either party, on the value of the home-quarter as a single tract of land.

SECTION 9. Rulemaking authority. The board may adopt rules under chapter 28-32 as are necessary to implement this Act.

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 \$50,000, or so much thereof as may be necessary, to the credit review board for administrative expenses for the period beginning with the effective date of this Act, and ending June 30, 1987.

SECTION 11. TRANSFER - APPROPRIATION. There is hereby authorized the transfer to the home-quarter purchase fund the sum of \$2,000,000 from the accumulated and undivided profits of the Bank of North Dakota. Such moneys shall be transferred during the biennium

on a quarterly basis, beginning July 1, 1985, and ending June 30, 1987, upon order of the industrial commission, in amounts of \$250,000, or so much thereof as is available. Any funds transferred under this section are hereby appropriated to the home-quarter purchase fund for interest buydowns.

Approved April 15, 1985

CARRIAGE

CHAPTER 138

SENATE BILL NO. 2478
(Stromme)

TELEPHONE USE DURING KIDNAP EMERGENCY

AN ACT to create and enact two new sections to chapter 8-10 of the North Dakota Century Code, relating to interruption of telephone communications during a kidnap or hostage emergency, and to exemption from liability for making such an interruption; and to provide a penalty.

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

SECTION 1. A new section to chapter 8-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interruption of telephone communications in kidnapping or hostage emergency - Duty of telephone company to assist - Prohibited communications - Penalty.

1. As used in this section, "peace officer" has the same meaning as in section 12.1-01-04.
2. A peace officer who has probable cause to believe that an individual is being unlawfully confined or has been taken hostage, who has supervisory control over investigating the incident, and who has lawful jurisdiction in the geographical area where the violation is believed to be occurring, may order a telephone company to cut, reroute, or divert telephone lines for the purpose of controlling communications. Nothing in this section shall deny the telephone company reimbursement for the value of their services or damage to their facilities resulting from their compliance with such order.
3. Each telephone company shall designate an employee to serve as a security official and to provide assistance as required by the supervising peace officer under this section.
4. A person may not initiate telephone communications with a suspected violator if that person knows that an order has

been issued under subsection 2. Violation of this subsection is a class B misdemeanor.

SECTION 2. A new section to chapter 8-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption from liability for interruption of telephone communications. Good faith reliance on an order issued under section 1 of this Act is a complete defense to any legal action brought for interruption of telephone communications occurring because of section 1 of this Act.

Approved March 27, 1985

CONTRACTS AND OBLIGATIONS

CHAPTER 139

HOUSE BILL NO. 1098
(Riley)

STATUTE OF FRAUDS FOR LOAN CONTRACTS

AN ACT to create and enact a new subsection to section 9-06-04 of the North Dakota Century Code, relating to contracts for loans or credit under the statute of frauds.

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

SECTION 1. A new subsection to section 9-06-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

An agreement or promise for the lending of money or the extension of credit in an aggregate amount of twenty-five thousand dollars or greater.

Approved March 27, 1985

CORPORATIONS

CHAPTER 140

HOUSE BILL NO. 1192
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES, DEFINITIONS, ADMINISTRATION, EXEMPTIONS, AND FEES

AN ACT to create and enact subdivision i of subsection 6 of section 10-04-05 of the North Dakota Century Code, relating to exempt securities; and to amend and reenact section 10-04-02, subsections 1 and 3 of section 10-04-03, subdivision c of subsection 8 and subsection 10 of section 10-04-06, and subsection 6 of section 10-04-10 of the North Dakota Century Code, relating to definitions, administration, exempt transactions, and fees.

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

SECTION 1. AMENDMENT. Section 10-04-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" ~~shall mean~~ means the securities commissioner of this state.
2. "Dealer" ~~shall mean~~ means every person, other than a salesman, who engages in this state, either for all or part of his time:
 - a. Directly or indirectly, as agent, broker, or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person; or
 - b. Directly or through an officer, director, employee, or agent, which officer, director, employee, or agent is not registered as a dealer under this chapter, in selling securities issued by such person.
3. "Investment adviser" ~~shall mean~~ means any person who, for compensation, engages in the business of advising others,

either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- a. A bank, savings institution, or trust company.
 - b. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession.
 - c. A broker or dealer whose performance of these services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation for them.
 - d. A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation.
 - e. A person whose advice, analysis, or reports relate only to securities exempted by subsection 1 of section 10-04-05.
 - f. A person who has no place of business in this state if his only clients in this state are other investment advisers, brokers or dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.
 - g. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.
4. "Issuer" ~~shall mean~~ means every person who issues or proposes to issue any security, except that:
- a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

- b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.
- c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.
5. "Offer for sale" or "offer to sell" shall mean means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired by subscription or conversion.
6. "Person" shall mean means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any other unincorporated organization.
7. "Registered dealer" shall mean means a dealer registered under this chapter.
8. "Registered salesman" shall mean means a salesman registered under this chapter.
9. "Sale" or "sell" shall mean means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
10. "Salesman" shall mean means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar functions is a "salesman" only if he otherwise comes within the definition.
11. "Securities Act of 1933" shall mean means the Act of Congress of the United States known as the Securities Act of 1933, as now or hereafter amended.

12. "Security" shall mean means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsections 1 and 3 of section 10-04-03 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The securities commissioner shall be appointed by the governor and confirmed by the senate, and shall hold his office for a term of four years, beginning on the first day of July following a national presidential election, and continuing until his a successor has been appointed, confirmed by the senate, and has qualified, unless he is removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee may shall hold office until the senate confirms or rejects the appointment. The commissioner shall be skilled in securities, and shall not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter, and may not be an officer, director, or employee of any dealer, salesman, or investment adviser adviser required to be registered under this chapter. The governor may remove from office any commissioner who fails to discharge faithfully the duties of his office or who becomes disqualified under the provisions of this section.

It shall be the prime duty of such the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount

appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used by him in the administration of this chapter. The commissioner shall may employ from time to time such employees as are necessary for the administration of this chapter; and they shall perform the duties assigned by the commissioner. In the absence or disability of the commissioner, his chief the deputy shall administer the provisions of this chapter, as acting commissioner.

3. The In addition to their regular compensation, the commissioner, or any person employed by him, and the commissioner's employees shall be paid in addition to their regular compensation, travel expenses necessary and actually incurred by each of them in the performance of their duties.

SECTION 3. Subdivision i of subsection 6 of section 10-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

- i. If the issuer is a successor to another issuer, it shall be deemed to have met the conditions in subdivisions b, c, and d if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

SECTION 4. AMENDMENT. Subdivision c of subsection 8 and subsection 10 of section 10-04-06 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- c. Either Moody's, Fitch's, or Standard and Poor's securities manuals, or other recognized securities manuals A nationally recognized securities manual approved by the commissioner contain contains, and has contained for a period of not less than ninety days prior to the sale, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal year preceding that date or the most recent year of operations.

- 10. The sale of capital stock of a corporation may be exempted by the securities commissioner if the corporation is organized under chapter 10-30 or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended; or the sale of memberships, including dues, in a nonprofit corporation incorporated under chapter 10-24 may be exempted by the securities commissioner if the corporation is organized and operated for the primary purpose of promoting community development.

SECTION 5. AMENDMENT. Subsection 6 of section 10-04-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 6. Fees. The fee, which must accompany the application, for registration and for each annual renewal thereof shall be is:
 - a. For each dealer employing fifteen or fewer salesmen in this state \$100.00
 - b. For each dealer employing more than fifteen salesmen in this state - - - - \$~~175.00~~
 - e- For each salesman
 - General examination \$ 10.00
 - State law examination \$ 5.00
 - Registration fee \$ 20.00
 - Renewal fee \$ 20.00
 - d- c. For each investment adviser
 - General examination \$ 10.00
 - State law examination \$ 5.00
 - Registration fee \$ 50.00

An application to register as a dealer, salesman, or investment adviser may, with the consent of the commissioner, be withdrawn upon written application, but in no event shall any registration fees be returned.

Approved March 14, 1985

CHAPTER 141

SENATE BILL NO. 2494
(Senators David, Krauter)
(Representative Shide)

SECURITIES EXEMPT FROM REGISTRATION

AN ACT to amend and reenact subsection 9 of section 10-04-06 of the North Dakota Century Code, relating to securities transactions exempt from registration requirements.

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

SECTION 1. AMENDMENT. Subsection 9 of section 10-04-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Any transaction pursuant to an offer directed by the offeror to not more than ~~ten~~ twenty-five persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- a. The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.
 - b. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).
 - c. The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of one hundred dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subdivisions a, b, and c with or without the substitution of a limitation on remuneration.

Approved March 28, 1985

CHAPTER 142

HOUSE BILL NO. 1547
(Richard, Martin)

CORPORATE MINERAL INTERESTS

AN ACT to amend and reenact section 10-06-01 of the North Dakota Century Code, relating to disposal of agricultural land and mineral interests by certain corporations.

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

*SECTION 1. AMENDMENT. Section 10-06-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited - Retention of mineral interests prohibited. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. For land and minerals acquired after July 1, 1985, any corporation which acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and that is prohibited from owning or leasing land used in farming or ranching, is prohibited from retaining mineral interests in land used for farming or ranching when the corporation divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation divests itself of the land pursuant to this chapter. As used in this chapter, "corporation" includes any joint stock company or association.

Approved March 31, 1985

* NOTE: Section 10-06-01 was also amended by section 1 of House Bill No. 1068, chapter 143, and amended by section 1 of House Bill No. 1136, chapter 144.

CHAPTER 143

HOUSE BILL NO. 1068
(Legislative Council)
(At the request of Interim Judiciary "A" Committee)

CORPORATIONS EXCLUDED FROM FARM
PARTNERSHIP

AN ACT to amend and reenact section 10-06-01 of the North Dakota Century Code, relating to prohibition of corporations from becoming partners in a farm or ranch.

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

* SECTION 1. AMENDMENT. Section 10-06-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. A corporation may be a partner in a partnership that is in the business of farming or ranching only if that corporation complies with this chapter. As used in this chapter, "corporation" includes any joint stock company or association.

Approved March 14, 1985

* NOTE: Section 10-06-01 was also amended by section 1 of House Bill No. 1547, chapter 142, and amended by section 1 of House Bill No. 1136, chapter 144.

CHAPTER 144

HOUSE BILL NO. 1136
(Committee on Judiciary)
(At the request of the Secretary of State)

CONVERSION OF BUSINESS CORPORATION TO FARM CORPORATION

AN ACT to amend and reenact section 10-06-01 of the North Dakota Century Code, relating to farm corporations.

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

* SECTION 1. AMENDMENT. Section 10-06-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. As used in this chapter, "corporation" includes any joint stock company or association.

A business corporation organized under chapter 10-19 may convert to a farm corporation by adopting an amendment to its articles of incorporation. The amendment must specify that the corporation elects to be subject to this chapter, and the corporation does comply with all requirements of this chapter. The amendment must be filed with the prescribed fee and with the initial report required by section 10-06-07.3.

Approved March 14, 1985

* NOTE: Section 10-06-01 was also amended by section 1 of House Bill No. 1068, chapter 143, and amended by section 1 of House Bill No. 1547, chapter 142.

CHAPTER 145

HOUSE BILL NO. 1067
(Legislative Council)
(Interim Judiciary "A" Committee)

CORPORATE FARMING PROHIBITION EXCEPTIONS

AN ACT to create and enact five new sections to chapter 10-06 of the North Dakota Century Code, relating to the definition of nonprofit organizations, exemptions from the corporate farm prohibition, and required divestiture; and to amend and reenact sections 10-06-04.1, 10-06-07, and 10-06-07.3 of the North Dakota Century Code, relating to the corporations allowed to farm or ranch, an income limitation on nonfarm activities of corporate farms, and initial report requirements.

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

SECTION 1. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Nonprofit organization" defined. As used in the chapter, "nonprofit organization" means an organization or trust that has tax-exempt status under at least one of the following sections of the Internal Revenue Code:

1. An organization that was in existence on December 31, 1984, and that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals under section 501(c)(3), or is a domestic fraternal organization under section 501(c)(10).
2. A charitable, religious, educational, or scientific organization classified as either a private foundation or as a public charity having status as an organization described in section 509(a)(1) or (3).
3. A trust described in section 4947 for which a deduction is allowable under section 170.

SECTION 2. AMENDMENT. Section 10-06-04.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-04.1. Certain nonprofit organizations or trusts may own or lease land - Certain nonprofit organizations may continue farming or ranching - Restriction on acquisition and ownership of land.

1. A nonprofit organization exempt from taxation under section 501(e)(3) of the Internal Revenue Code {26 U.S.C. 501(e)(3)} or a trust for the benefit of an individual or a class of individuals related within the degrees of kinship specified in subsection 2 of section 10-06-07 may own or lease farmland or ranch land if that land is leased to a person who farms or ranches the land as a sole proprietorship, partnership, or a corporation allowed to engage in farming or ranching under section 10-06-07.
2. A To the extent farming or ranching is essential to a nonprofit organization's charitable purposes a nonprofit organization exempt from taxation under section 501(e)(3) of the Internal Revenue Code and actively engaged in the business of farming or ranching in this state on January 1, 1983, may continue to engage in the business of farming or ranching without interruption after January 1, 1983.
3. A nonprofit organization exempt from taxation under section 501(e)(3) of the Internal Revenue Code which owned farmland or ranch land for the preservation of unique historical, archaeological, or environmental land prior to before January 1, 1983, may continue ownership of such that land without interruption after January 1, 1983. An organization that is holding land for scenic preservation shall either prohibit all hunting, or if any parcel of the land is open to hunting, it must be open to hunting by the general public.

* **SECTION 3. AMENDMENT.** Section 10-06-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-07. Corporation allowed to engage in the business of farming or ranching - Requirements. This chapter does not prohibit a domestic corporation from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapters 10-19, 10-20, 10-21, 10-22, and 10-23 not inconsistent with this chapter and. The following requirements also apply:

1. The corporation must not have more than fifteen shareholders.

* **NOTE:** Section 10-06-07 was also amended by section 1 of Senate Bill No. 2041, chapter 147.

2. Each shareholder ~~is must be~~ related to each of the other shareholders within one of the following degrees of kinship or affinity: parent, child, son, daughter, stepson, stepdaughter, grandparent, grandchild, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is the spouse of a person so related.
3. Each shareholder ~~is must be~~ an individual, ~~except that any or one~~ of the following ~~may also be shareholders~~:
 - a. A trust for the benefit of an individual or a class of individuals who are related to a every shareholder of the corporation within the degrees of kinship or affinity specified in this section.
 - b. An estate of a decedent who was related to a every shareholder of the corporation within the degrees of kinship or affinity specified in this section.
4. Neither a trust nor an estate may be a shareholder if the beneficiaries of the trust or the estate together with the other shareholders are more than fifteen in number.
- 4- 5. Each individual who is a shareholder ~~is must be~~ a citizen of the United States or a permanent resident alien of the United States.
- 5- 6. The officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of its shareholders ~~shall~~ must be an individual residing on or operating the farm or ranch.
- 6- 7. An annual average of at least sixty-five percent of the corporation's gross income over the previous five years, or for each year of its existence, if less than five years, shall have been derived from farming or ranching operations.
- 7- 8. The corporation's income from nonfarm rent, nonfarm royalties, dividends, interest, and annuities ~~does not~~ cannot exceed twenty percent of the corporation's gross receipts income.

SECTION 4. AMENDMENT. Section 10-06-07.3 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-07.3. Initial report - Shareholder requirements.

1. Every farming or ranching corporation must file an initial report with its articles of incorporation. The report

must be ~~executed~~ signed by the incorporators and must contain the following:

- 1- a. The name of the corporation.
 - 2- b. The name and addresses of the shareholders of the corporation.
 - 3- Each shareholder must be related to each of the other shareholders within one of the following degrees of kinship: parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is a spouse of a person so related.
 - c. The relationships between shareholders.
 - 4- d. A statement ~~that~~ of whether the shareholders are citizens of the United States or a permanent resident ~~alien~~ aliens of the United States.
 - 5- e. A statement ~~that~~ of whether at least one of the shareholders is actively engaged in operating the farm or ranch and ~~whether~~ at least one of its the shareholders is an individual residing on or operating the farm or ranch.
 - 6- f. A statement listing the acreage and location listed by section, township, range, and county ~~or~~ of all land in the state owned or leased by the corporation and used for farming or ranching.
2. ~~No~~ A corporation may not commence farming or ranching in this state until the secretary of state has received and filed the articles of incorporation and the initial report required by this section. The secretary of state shall ~~cause to be printed in~~ furnish to a newspaper of general circulation in each county or counties ~~wherein~~ in which any land is owned or leased by each corporation a legal notice reporting the following:
- a. The names of each corporation and its respective shareholders as listed in the initial report ~~and a.~~
 - b. A statement to the effect that each of the corporations listed has reported that it owns or leases land used for farming or ranching ~~within~~ in the county and that a description of ~~such~~ that land is available for inspection at the secretary of state's office.

SECTION 5. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption from certain disclosure and other requirements for certain organizations. Sections 10-06-07, 10-06-07.3, 10-06-08, and 10-06-08.1 do not apply to nonprofit organizations or to corporations such as banks, trust companies, or foundations serving in a fiduciary capacity as the personal representative or trustee of an estate or trust for an individual described in subsection 2 of section 10-06-07.

SECTION 6. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Industrial and business purpose exception. A corporation that is not engaged in the business of farming or ranching may own or lease land used for farming or ranching, only when the land is necessary for residential or commercial development, the siting of buildings, plants, facilities, industrial parks, or similar business or industrial purposes of the corporation, or for uses supportive of or ancillary to adjacent nonagricultural land for the benefit of both land parcels. The farmland or ranch land while not being immediately used for any purpose of the corporation must be available to be leased by persons actually engaged in farming or ranching.

SECTION 7. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Acquisition of certain farmland or ranch land by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranch land only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06-04.1, the nonprofit organization must, before January 1, 1985, have been either incorporated in this state or issued a certificate of authority to do business in this state.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
 - a. The land must be maintained and managed solely for the purpose of conserving natural area and habitat for biota.
 - b. Any agricultural use of the land is incidental to and in accordance with the management of the land for conservation and the agricultural use is by an individual or by a person allowed to engage in farming or ranching under section 10-06-07.
 - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

3. Before any farmland or ranch land 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 ranch land 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 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.
4. On failure to qualify to continue ownership under subsection 2, the land is disposed of within five years of that failure to qualify.

SECTION 8. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Required divestiture of agricultural land. In addition to the divestiture requirements of section 7 of this Act and section 10-06-13, a nonprofit corporation that acquires land by gift or devise after December 31, 1984, the ownership of which is not permitted under this chapter, shall divest itself of the land acquired after December 31, 1984, within ten years after the acquisition. Ownership is holding either fee or equitable title, unless fee title is held solely as security for payment of the purchase price, or unless fee title does not carry with it the right to immediate possession of the property. If the corporation fails to divest itself of the land within the required time, the attorney general shall take action under section 10-06-13.

Approved April 15, 1985

CHAPTER 146

HOUSE BILL NO. 1636
(Meyer, Riehl)

CORPORATE FARMLAND DIVESTITURE

AN ACT to amend and reenact section 10-06-13 of the North Dakota Century Code, relating to divestiture of farmland and ranchland.

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

SECTION 1. AMENDMENT. Section 10-06-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-13. Enforcement.

1. The attorney general shall commence an action in the district court of the county in which the substantial portion of ~~farm~~ farmland or ranchland used in violation of this chapter is situated, if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the register of deeds of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the register of deeds of each county in which any portion of the land is located. Thereafter, the corporation shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by it in violation of this chapter, and cease all farming and ranching operations. Any corporation that fails to comply with the court's order shall be dissolved by the secretary of state.
2. The divestment period is deemed to be a covenant running with the title to the land against any corporate grantee,

corporate successor, or corporation assignee of the corporation not authorized to do business under this chapter.

3. Any land not divested within the divestment period prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including enjoining the corporation from completing performance on the remainder of any leasehold which is in violation of this chapter. ~~Any~~
4. Subject to the divestiture requirements of subsections 5, 6, and 7, a domestic or foreign corporation may acquire ~~farm~~ farmland or ranchland as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise. ~~All farm~~
5. Unless retention of the farmland or ranchland is permitted under subsection 6 or 7, all farmland or ranchland acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter. ~~in the interim such~~
6. The disposition requirement does not apply to a corporation that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from a mortgagor instead of a foreclosure, if, by the expiration of one month after what is or what would have been if the mortgage had been foreclosed the redemption period of the mortgage, that corporation leases to the prior mortgagor from whom it was acquired, with an option to purchase, and if documents evidencing the lease agreement have been filed with the register of deeds of each county in which the land is located. A copy of a notice of lease is sufficient evidence. The exemption in this subsection applies for only five years and then only if the property has been appraised in accordance with subsection 8. The annual lease payments required of the tenant cannot exceed seven percent of the appraised value.
7. The disposition requirement does not apply to a corporation that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from the mortgagor instead of foreclosure, if, by the expiration of one month after what is or what would have been if the mortgage had been foreclosed the redemption period of the mortgage, that corporation contracts for the sale of the land to the prior mortgagor from whom it was

acquired, and if documents evidencing the purchase agreement have been filed with the register of deeds of each county in which the land is located. A copy of a notice of the contract for deed is sufficient evidence. An exemption under this subsection is valid only if an appraisal has been made in accordance with subsection 8, and if it is valid, the exemption is unlimited in duration. The sale price cannot exceed the price determined by the appraisers.

8. If an appraisal is required, the appraisal must be made by three independent appraisers, one selected by the corporation, one selected by the prior mortgagor, and the third selected by the first two appraisers.
9. If a corporation holds land pending divestiture, and the holding is not otherwise governed by this section, the land shall be leased to persons actually engaged in farming or ranching and a disposal shall not be to a corporation ~~either than a~~ unless ownership by that corporation is authorized under the provisions of this chapter.
10. Any corporation continuing to violate the provisions of this chapter shall be dissolved by the attorney general in accordance with the provisions of the laws of this state.

Approved April 15, 1985

CHAPTER 147

SENATE BILL NO. 2041
(Olson)

BUSINESS CORPORATION REVISION

AN ACT to create and enact chapter 10-19.1 of the North Dakota Century Code, relating to the creation, organization, operation, liability, and dissolution of business corporations; to amend and reenact sections 10-06-07, 10-06-07.1, 10-22-01, 10-22-02, 10-22-03, 10-22-05, 10-22-06, 10-22-07, 10-22-15, 10-22-16, 10-22-18, 10-23-09, 10-23-11, 10-23-12, 10-23-13, 10-23-14, 10-23-15, 10-23-16, 10-23-17, 10-30-05, subsection 12 of section 25-03.1-02, and subsection 4 of section 38-08.1-03.1 of the North Dakota Century Code, relating to references to chapters 10-19, 10-20, and 10-21 (North Dakota Business Corporation Act); and to repeal chapters 10-19, 10-20, and 10-21 of the North Dakota Century Code, relating to the North Dakota Business Corporation Act; and to declare an emergency.

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

* SECTION 1. AMENDMENT. Section 10-06-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-07. Corporation allowed to engage in the business of farming or ranching - Requirements. This chapter does not prohibit a domestic corporation from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapters ~~10-19~~, ~~10-20~~, ~~10-21~~ 10-19.1, 10-22, and 10-23 not inconsistent with this chapter and:

1. The corporation must not have more than fifteen shareholders.
2. Each shareholder is related to each of the other shareholders within one of the following degrees of kinship: parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is the spouse of a person so related.

* NOTE: Section 10-06-07 was also amended by section 3 of House Bill No. 1067, chapter 145.

3. Each shareholder is an individual, except that any of the following may also be shareholders:
 - a. A trust for the benefit of an individual or a class of individuals who are related to a shareholder of the corporation within the degrees of kinship specified in this section.
 - b. An estate of a decedent who was related to a shareholder of the corporation within the degrees of kinship specified in this section.

Neither a trust nor an estate may be a shareholder if the beneficiaries of the trust or the estate together with the other shareholders are more than fifteen in number.

4. Each individual who is a shareholder is a citizen of the United States or a permanent resident alien of the United States.
5. The officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of its shareholders shall be an individual residing on or operating the farm or ranch.
6. An annual average of at least sixty-five percent of the corporation's gross income over the previous five years, or for each year of its existence, if less than five years, shall have been derived from farming or ranching operations.
7. The corporation's income from rent, royalties, dividends, interest, and annuities does not exceed twenty percent of the corporation's gross receipts.

SECTION 2. AMENDMENT. Section 10-06-07.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-07.1. Applicability of Business Corporation Act. Chapters ~~10-19, 10-20, 10-21~~ 10-19.1, 10-22, and 10-23 shall be ~~are~~ applicable to farming and ranching corporations and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other business corporations except where inconsistent with the intent of this chapter. This chapter ~~shall take~~ takes precedence in the event of any conflict with the provisions of chapters ~~10-19 through 10-19.1, 10-22, and 10-23.~~

SECTION 3. Chapter 10-19.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-19.1-01. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box.
3. "Articles" means, in the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Board" means the board of directors of a corporation.
5. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
6. "Closely held corporation" means a corporation which does not have more than thirty-five shareholders.
7. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.
8. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
9. "Director" means a member of the board.
10. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as

consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

11. "Filed with the secretary of state" means that signed duplicate originals of a document, together with the fees provided in chapter 10-23, have been delivered to the secretary of state and have been determined by the secretary of state to conform to law. The secretary of state shall then endorse on each original the word "filed" and the month, day, and year, 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.
12. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.
13. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
14. A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
15. "Legal representative" means a person empowered to act for another person, including an agent, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.
16. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation. In all other cases, "notice" is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the

- office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is deemed received when it is given.
17. "Officer" means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 10-19.1-56.
 18. "Organization" means a domestic or foreign corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
 19. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
 20. "Parent" of a specified corporation means a corporation that directly, or indirectly through related corporations, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
 21. "Person" includes an individual and an organization.
 22. "Principal executive office" means an office where the elected or appointed president of a corporation has an office. If the corporation has no elected or appointed president "principal executive office" means the registered office of the corporation.
 23. "Related corporation" of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.
 24. "Security" has the meaning given it in subsection 12 of section 10-04-02.
 25. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
 26. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

27. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
28. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.
29. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
30. "Subsidiary" of a specified corporation means a corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations, by the specified corporation.
31. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
32. "Vote" includes authorization by written action.
33. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the person signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

10-19.1-02. Application to corporations incorporated after June 30, 1985. This chapter applies to all corporations for profit incorporated for a purpose or purposes for which a corporation might be incorporated under this chapter or which are incorporated under chapters 6-05, 10-06, 10-30, 10-31, 26-08, or any other chapter which provides that such corporations are governed by the general corporation laws of this state.

10-19.1-03. Election prior to mandatory application. A corporation in existence prior to July 1, 1985, which has incorporated under chapters 10-19, 10-20, 10-21, 10-22, and 10-23 as

they existed on June 30, 1985, or under the provisions of chapters 6-05, 10-06, 10-30, 10-31, 26-08, or any other chapter which provides that such corporations are governed by the general corporation laws of this state, may elect after June 30, 1985, and before July 1, 1986, to become governed by this chapter.

1. If the articles of an electing corporation include a provision prohibited by this chapter or omit a provision required by this chapter or are otherwise inconsistent with this chapter, the electing corporation shall amend its articles to conform to the requirements of this chapter. The appropriate provisions of the corporation's articles or bylaws or the law by which it was governed before the effective date of the election made pursuant to this section control the manner of adoption of the amendment.
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 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.
3. Upon filing an election pursuant to this section all provisions of the bylaws that are consistent with this chapter remain or become effective and all provisions of the bylaws that are inconsistent with this chapter cease to be effective.

10-19.1-04. Mandatory application. After June 30, 1986, this chapter applies to all existing corporations incorporated under any chapter of this code providing for the incorporation of corporations for a purpose or purposes for which a corporation might be incorporated under this chapter or which are otherwise to be governed by the general corporation laws of this state.

All provisions of the articles and bylaws of the corporation that may be included in the articles or bylaws under this chapter remain in effect. All provisions of the articles and bylaws of the corporation that are inconsistent with this chapter cease to be effective on July 1, 1986. Any provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

10-19.1-05. Retention of two-thirds majority.

1. If the articles of a corporation described in section 10-19.1-02 or 10-19.1-03 do not contain a provision specifying the proportion of the voting power of the shares required for approval of amendments to the articles, plans of merger or exchange, or sales of assets, a shareholder or shareholders holding more than one-third of the voting power of all the shares entitled to vote for any or all of the above-mentioned actions may, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in chapter 10-23, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares entitled to vote for any or all of the above-mentioned actions for which no required majority was specified, notwithstanding any provisions of section 10-19.1-19, 10-19.1-98, or 10-19.1-104 to the contrary. Notice that the demand has been filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
2. A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in section 10-19.1-02 or 10-19.1-03 may, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in chapter 10-23, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of all the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 10-19.1-107. Notice that the demand has been filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
3. A signed written demand by the shareholders of a corporation pursuant to subsection 1 or 2 is valid only if filed with the secretary of state before July 1, 1986.

10-19.1-06. Transition. The continuation or completion of any act by a corporation that has not incorporated under, but has become governed by, this chapter, and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, if otherwise lawful before the corporation became governed by this chapter, remains valid, and may be continued, completed, consummated, enforced, or terminated as required or permitted by a statute applicable prior to the date on which the corporation became governed by this chapter.

10-19.1-07. Reservation of legislative power. The legislative assembly has the power to prescribe such regulations, provisions, and limitations as it determines to be advisable, which are binding upon any and all corporations subject to this chapter. The legislative assembly may amend, repeal, or modify this chapter.

Every grant of corporate power is subject to alteration, suspension, or repeal in the discretion of the legislative assembly. Any statute of this state relating to corporations may be repealed or amended. The alteration, suspension, amendment, or repeal, or the dissolution of any corporation, does not take away or impair any remedy given against the corporation, its shareholders, or officers for any liability which has been previously incurred.

The legislative assembly, or the house of representatives or the senate, may examine the affairs and conditions of any corporation in this state at all times. For that purpose, any committee appointed by the legislative assembly, or the house of representatives or the senate, may administer all necessary oaths to the directors, officers, and shareholders of a corporation, and may examine them on oath in relation to its affairs and condition, and may examine the safes, books, papers, and documents belonging to such corporation or pertaining to its affairs and condition and compel the production of all keys, books, papers, and documents by summary process to be issued on application to any district court or any district judge under the rules the court prescribes.

10-19.1-08. Purposes. A corporation may be incorporated under this chapter for any business purpose or purposes, unless some other statute of this state requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

10-19.1-09. Incorporators. One or more individuals of the age of eighteen years or more may act as incorporators of a corporation by filing with the secretary of state articles of incorporation for the corporation.

10-19.1-10. Articles.

1. The articles of incorporation must contain:

- a. The name of the corporation.
- b. The address of the registered office of the corporation and the name of its registered agent, at that address.
- c. The aggregate number of shares that the corporation has authority to issue.
- d. The name and address of each incorporator.

2. The articles of incorporation may not contain:

- a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.
 - b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.
3. The following provisions govern a corporation unless modified in the articles:
- a. A corporation has general business purposes as provided in section 10-19.1-08.
 - b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.
 - c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.
 - d. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.
 - e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.
 - f. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.
 - g. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
 - h. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
 - i. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
 - j. The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.

- k. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.
 - l. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.
 - m. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.
 - n. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.
 - o. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.
 - p. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.
4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
- a. Directors serve for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
 - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
 - c. The method provided in section 10-19.1-41 must be used for removal of directors.
 - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.

- e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
- f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
- g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
- h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.
- i. The board may establish a committee of disinterested persons as provided in section 10-19.1-49.
- j. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
- k. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
- l. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 2 of section 10-19.1-73.
- m. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
- n. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of an entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-77.
- o. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 3 of section 10-19.1-77.
- p. Indemnification of certain persons is required as provided in section 10-19.1-91.
- q. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.

5. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, in the bylaws:
- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
 - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
 - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
 - d. Directors may be classified as provided in section 10-19.1-38.
 - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
 - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
 - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
 - h. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
 - i. Additional officers may be designated as provided in section 10-19.1-54.
 - j. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
 - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
 - l. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.
 - m. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.

- n. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
 - o. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.
 - p. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.
 - q. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
 - r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 4 of section 10-19.1-77.
 - s. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
 - t. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
6. The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.
7. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

10-19.1-11. Filing of articles of incorporation. Duplicate originals 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 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.

10-19.1-12. Effective date of incorporation. The corporate existence begins upon the issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent and required to be performed by the incorporators have been performed and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

10-19.1-13. Corporate name.1. The corporate name:

- a. Must be in the English language or in any other language expressed in English letters or characters.
- b. Must contain the word "corporation", "incorporated", or "limited", or must contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." but that word or abbreviation may not be immediately preceded by the word "and" or the character "&".
- c. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than one or more business purposes for which a corporation may be incorporated under this chapter.
- d. May not be the same as, or deceptively similar to, the name of a domestic or a foreign corporation or limited partnership authorized to do business in this state, or a name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14 or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the articles:
 - (1) The written consent of the domestic or foreign corporation, limited partnership, or partnership authorized to do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or
 - (2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic corporation existing on July 1, 1985, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
3. This section and section 10-19.1-14 do not abrogate or limit the law of unfair competition or unfair practices, nor chapter 47-25, nor the laws of the United States with

respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.

4. A corporation that is merged with another domestic or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation all or substantially all of the assets of another domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other corporations, if the other corporation was incorporated under the laws of, or is authorized to transact business in, this state.
5. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

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.

10-19.1-15. Registered office - Registered agent.

1. A corporation shall continuously maintain a registered office in this state. A registered office need not be the

same as the principal place of business or the principal executive office of the corporation.

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 capacity must be filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-23.

10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.

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.
2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subsection l, except that it need be signed only by the registered agent, need not be responsive to subdivision e or h, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

10-19.1-17. Amendment of articles. The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator and each initial director may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 10-19.1-18, 10-19.1-19, and 10-19.1-20.

10-19.1-18. Procedure for amendment before issuance of shares. Before the issuance of shares by a corporation, the articles may be amended pursuant to section 10-19.1-30 by the incorporators or by the board.

10-19.1-19. Procedure for amendment after issuance of shares.

1. After the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.
2. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. The provisions of this subsection regarding shareholder proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder govern.

3. Written notice of the shareholders' meeting setting forth the substance of the proposed amendment must be given to each shareholder in the manner provided in section 10-19.1-73 for the giving of notice of meetings of shareholders.
4. The proposed amendment to the articles is adopted:
 - a. When approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote; or
 - b. If the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:
 - (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or
 - (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

10-19.1-20. Class or series voting on amendments. The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of the class or series;
2. Increase or decrease the par value of the shares of the class or series;
3. Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;
4. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;

5. Change the rights or preferences of the shares of the class or series;
6. Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same or another class or series;
7. Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;
8. Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;
9. Limit or deny any existing preemptive rights of the shares of the class or series; or
10. Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

10-19.1-21. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared that contain:

1. The name of the corporation.
2. The amendment adopted.
3. The date of the adoption of the amendment by the shareholders, or by the incorporators or the board where no shares have been issued.
4. If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected.
5. If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to them.

10-19.1-22. Effect of amendment.

1. An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.

2. If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

10-19.1-23. Filing articles of amendment. Duplicate originals 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 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.

10-19.1-24. Effective date of articles of amendment. The articles of amendment are effective upon acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

10-19.1-25. Amendment of articles in court-supervised reorganization.

1. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended for such purpose so as to:
 - a. Change the corporate name, period of duration, or corporate purposes of the corporation.
 - b. Repeal, alter, or amend the bylaws of the corporation.
 - c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.
 - d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.
 - e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe

for shares of any class, and fix the terms and conditions thereof.

- f. Constitute or reconstitute and classify or reclassify board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
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 the provisions of an applicable statute of the United States.
 - b. Duplicate originals 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 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.

10-19.1-26. Powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.
5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest therein, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality thereof.
7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income.
8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes; for the purpose of fostering national or international amateur sports competition; and for the prevention of cruelty to children and animals.
12. A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related corporations' officers, directors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain

insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.
14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of any or all of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-19.1-27.
16. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 10-19.1-31.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in sections 10-19.1-48 and 10-19.1-49 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may issue securities and rights to purchase securities as provided in sections 10-19.1-61 through 10-19.1-69.
20. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-19.1-89.
21. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-19.1-90.
22. A corporation shall indemnify persons against certain expenses and liabilities only as provided in section 10-19.1-91.

23. A corporation may conduct all or part of its business under one or more trade names as provided in chapter 47-25.

24. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.

10-19.1-27. Corporate seal. A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

10-19.1-28. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer but such lack of capacity or power may be asserted:

1. In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract. However, anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.
2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.
3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation or to enjoin the corporation from the transaction of unauthorized business.

10-19.1-29. Unauthorized assumption of corporate powers - Liability. All persons who assume to act as a corporation without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.

10-19.1-30. Organization.

1. If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.
2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting.

10-19.1-31. Bylaws.

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with law or the articles.
2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

3. If a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19, for amendment of the articles. The provisions of this subsection regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

10-19.1-32. Board.

1. The business and affairs of a corporation must be managed by or under the direction of a board, subject to subsection 2 and section 10-19.1-83. The members of the first board may be named in the articles or elected by the incorporators pursuant to section 10-19.1-30 or by the shareholders.
2. The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this chapter requires or permits the board to take or the shareholders to take after action or approval of the board. As to an action taken by the shareholders in that manner:
- a. The directors have no duties, liabilities, or responsibilities as directors under this chapter with respect to or arising from the action.
 - b. The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this chapter with respect to and arising from the action.
 - c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board.
 - d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is

satisfied by a statement that the shareholders have taken the action under this subsection.

10-19.1-33. Number. The board must consist of one or more directors. The number of directors must be fixed by or in the manner provided in the articles or bylaws. The number of directors may be increased or, subject to section 10-19.1-41, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

10-19.1-34. Qualifications - Election. Directors must be individuals. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws.

10-19.1-35. Terms. Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of the shareholders. A fixed term of a director may not exceed five years. A director holds office until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

10-19.1-36. Acts not void or voidable. The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

10-19.1-37. Compensation. Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

10-19.1-38. Classification of directors. Directors may be divided into classes as provided in the articles or bylaws.

10-19.1-39. Cumulative voting for directors. Each shareholder entitled to vote for directors has the right to cumulate those votes in all elections of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

1. The presiding officer at the meeting shall announce, before the election of directors, that shareholders may cumulate their votes; and
2. Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares entitled to vote, or by distributing all of those votes on the same principle among any number of candidates.

10-19.1-40. Resignation. A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

10-19.1-41. Removal of directors.

1. The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 10-19.1-83.
2. A director may be removed at any time, with or without cause, if:
 - a. The director was named by the board to fill a vacancy;
 - b. The shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
 - c. A majority of the remaining directors present affirmatively vote to remove the director.
3. Any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the director represents sufficient to elect them. If less than the entire board is to be removed, no one of the directors may be removed if the votes of a sufficient number of shares are cast against the director's removal which, if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which the director is a part, would be sufficient to elect the director. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.
4. New directors may be elected at a meeting at which directors are removed.

10-19.1-42. Vacancies.

1. Unless different rules for filling vacancies are provided for in the articles or bylaws:
 - a. Vacancies on the board resulting from the death, resignation, removal, or disqualification of a

director may be filled by the affirmative vote of a majority of the remaining directors, even though the remaining directors constitute less than a quorum; and

b. Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of the directors serving at the time of the increase.

2. Each director elected under this section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders.

10-19.1-43. Board meetings.

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2. If the board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

2. A board meeting may be conducted by:

a. A conference among directors using any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subsection 3 for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting; or

b. Any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving ten days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

4. If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other

than by announcement at the meeting at which adjournment is taken.

5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

10-19.1-44. Absent directors. If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as a vote in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

10-19.1-45. Quorum. A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

10-19.1-46. Act of the board. The board shall take action by the affirmative vote of a majority of the directors present at a duly held meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

10-19.1-47. Action without meeting.

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

2. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

10-19.1-48. Committees.

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees are subject at all times to the direction and control of the board, except as provided in section 10-19.1-49.
2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present.
3. Sections 10-19.1-43, 10-19.1-44, and 10-19.1-45 apply to committees and members of committees to the same extent as those sections apply to the board and directors.
4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.
5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 10-19.1-50.
6. Committee members are deemed to be directors for purposes of sections 10-19.1-50, 10-19.1-51, and 10-19.1-91.

10-19.1-49. Committee of disinterested persons. Unless prohibited by the articles or bylaws, the board may establish a committee composed of two or more disinterested directors or other disinterested persons to determine whether it is in the best interests of the corporation to pursue a particular legal right or remedy of the corporation and whether to cause the dismissal or discontinuance of a particular proceeding that seeks to assert a right or remedy on behalf of the corporation. For purposes of this section, a director or other person is "disinterested" if the director or other person is not the owner of more than one percent of the outstanding shares of, or a present or former officer,

employee, or agent of, the corporation or of a related corporation and has not been made or threatened to be made a party to the proceeding in question. The committee, once established, is not subject to the direction or control of, or termination by, the board. A vacancy on the committee may be filled by a majority vote of the remaining members. The good faith determinations of the committee are binding upon the corporation and its directors, officers, and shareholders. The committee terminates when it issues a written report of its determinations to the board.

10-19.1-50. Standard of conduct.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.
2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or
 - c. A committee of the board upon which the director does not serve, duly established in accordance with sections 10-19.1-48 and 10-19.1-49 as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.
3. Subsection 2 does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subdivision a unwarranted.
4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director

shall not be considered to be present at the meeting for any purpose of this chapter;

b. Votes against the action at the meeting; or

c. Is prohibited by section 10-19.1-51 from voting on the action.

10-19.1-51. Director conflicts of interest.

1. A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;

b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by the holders of a majority of the outstanding shares, but shares owned by the interested director or directors shall not be counted in determining the presence of a quorum and shall not be voted;

c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.

2. For purposes of this section:

- a. A director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation; and
- b. A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the director, or any combination of them have a material financial interest.

10-19.1-52. Officers. The officers of a corporation must consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom must be elected by the board at such time and in such manner as may be provided in the bylaws.

10-19.1-53. Duties of officers and agents. All officers and agents of the corporation, as between themselves and the corporation, have such authority and must perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board not inconsistent with the bylaws.

10-19.1-54. Other officers. Any other officers, assistant officers, and agents, as necessary, may be elected or appointed by the board or chosen in such other manner as may be provided in the bylaws.

10-19.1-55. Multiple offices. Any number of offices or functions of those offices may be held or exercised by the same person. If a document must be signed by persons holding different offices or functions and a person holds or exercises more than one of those offices or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

10-19.1-56. Officers deemed elected. In the absence of an election or appointment of officers by the board, the person or persons exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

10-19.1-57. Contract rights. The election or appointment of a person as an officer or agent does not, of itself, create contract rights. However, a corporation may enter into a contract with an officer or agent. The resignation or removal of an officer or agent is without prejudice to any contractual rights or obligations.

10-19.1-58. Resignation - Removal - Vacancies.

1. An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.
2. An officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement.
3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 10-19.1-56.

10-19.1-59. Delegation. Unless prohibited by the articles or bylaws or by a resolution approved by the affirmative vote of a majority of the directors present, an officer elected or appointed by the board may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

10-19.1-60. Standard of conduct. An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-19.1-59 is deemed an officer for purposes of this section and sections 10-19.1-86 and 10-19.1-91.

10-19.1-61. Authorized shares.

1. Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.
2. All the shares of a corporation:
 - a. Must be of one class and one series, unless the articles establish, or authorize the board to establish, more than one class or series;
 - b. Must be common shares entitled to vote and shall have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent that the articles have created nonvoting shares

- or have fixed the relative rights and preferences of different classes and series; and
- c. Must have, unless a different par value is specified in the articles, a par value of one cent per share.
3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series.
4. A statement executed by an officer setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-23, before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.
5. Without limiting the authority granted in this section, a corporation may issue shares of a class or series:
- a. Subject to the right of the corporation to redeem any of those shares at the price fixed for their redemption by the articles or by the board;
- b. Entitling the shareholders to cumulative, partially cumulative, or noncumulative distributions;
- c. Having preference over any class or series of shares for the payment of distributions of any or all kinds;
- d. Convertible into shares of any other class or any series of the same or another class; or
- e. Having full, partial, or no voting rights, except as provided in section 10-19.1-20.

10-19.1-62. Subscriptions for shares.

1. A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.

2. A subscription for shares is irrevocable for a period of six months, unless the subscription agreement provides for, or unless all of the subscribers consent to, an earlier revocation.
3. A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times, or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board, but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.
4. Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation, or, if the amount due remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent subscriber, the board may declare a forfeiture of the subscription or cancel it in accordance with this subsection.
5. Upon forfeiture of a subscription, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. The excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale shall be paid to the delinquent subscriber or to a legal representative. The payment shall not exceed the amount actually paid by the delinquent subscriber.
6. If, within twenty days after the corporation offers to sell the shares subscribed for by the delinquent subscriber, no prospective purchaser offers to purchase the shares for a money price sufficient to pay the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale, or if the corporation has refunded to the subscriber or a legal representative a portion of the subscription price actually paid, the subscription may be canceled, the shares subscribed for may be restored to the status of authorized but unissued shares, and the corporation may retain the portion of the subscription price actually paid that does not exceed ten percent of the subscription price.

10-19.1-63. Consideration for shares - Value and payment - Liability.

1. Subject to any restrictions in the articles:

- a. The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued has been received by the corporation, the shares must be considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.
- b. Upon authorization by resolution approved by the affirmative vote of a majority of the directors present or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends or splits, including reverse share splits. No shares of a class or series may be issued to the holders of shares of another class or series, unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

2. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a

- claim is asserted pursuant to this section, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.
3. A corporation may issue only shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation:
- a. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering the shares not fully paid and nonassessable.
 - b. If shares are issued in violation of this subsection, the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:
 - (1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;
 - (2) The person to whom the shares were issued; and
 - (3) A successor or transferee of the interest in the corporation of a person described in paragraph 1 or 2, including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in paragraph 1 or 2, or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.
4. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection 3 is not liable under subdivision b of subsection 3 if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

5. A pledgee, holder of any other security interest, or legal representative is liable under subdivision b of subsection 3 only in that capacity. The liability of the person under subdivision a of subsection 3 is limited to the assets held in that capacity for the person or estate of the person described in paragraph 1 or 2 of subdivision b of subsection 3.
6. Each person liable under subdivision b of subsection 3 has a full right of contribution on an equitable basis from all other persons liable under that subdivision for the same transaction.
7. An action may not be maintained against a person under subdivision b of subsection 3 unless commenced within two years from the date on which shares are issued in violation of subsection 3.

10-19.1-64. Rights to purchase.

1. "Right to purchase" means the right, however designated, pursuant to the terms of a security or agreement, entitling a person to subscribe to, purchase, or acquire securities of a corporation, whether by the exchange or conversion of other securities, or by the exercise of options, warrants, or other rights, or otherwise, but excluding preemptive rights.
2. Rights to purchase may be either transferable or nontransferable and either separable or inseparable from other securities of the corporation, as the board may determine under this section.
3. A corporation may issue rights to purchase if:
 - a. Shares issuable upon the exercise of all outstanding rights to purchase, including the rights to purchase that are to be issued, are authorized under subsection 1 of section 10-19.1-10, and are unissued; and
 - b. The terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, subject to any restrictions in the articles.
4. The instrument evidencing the right to purchase must set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

10-19.1-65. Preemptive rights.

1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota, a shareholder of a corporation has the preemptive rights provided in this section, unless denied or limited in the articles or by the board pursuant to subdivision b of subsection 2 of section 10-19.1-61.
2. A preemptive right is the right of a shareholder to acquire a certain fraction of the unissued securities or rights to purchase securities of a corporation before the corporation may offer them to other persons.
3. A shareholder has a preemptive right whenever the corporation proposes to issue new or additional shares or rights to purchase shares of the same class or series as those held by the shareholder or new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same class or series as those held by the shareholder.
4. A shareholder does not have a preemptive right to acquire securities or rights to purchase securities that are:
 - a. Issued for a consideration other than money;
 - b. Issued pursuant to a plan of merger or exchange;
 - c. Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;
 - d. Issued upon exercise of previously issued rights to purchase securities of the corporation;
 - e. Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this subdivision, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by either state or federal securities laws; or
 - f. Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.
5. The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio

- that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue. For purposes of determining pursuant to this subsection the total number of shares of a class or series issued and outstanding at a particular time, all shares of that class or series issuable upon a conversion or exchange or upon the exercise of rights to purchase are considered issued and outstanding at that time.
6. A shareholder may waive a preemptive right in writing. The waiver is binding upon the shareholder whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed issuance described in the waiver.
 7. When proposing the issuance of securities with respect to which shareholders have preemptive rights under this section, the board shall cause notice to be given to each shareholder entitled to preemptive rights. The notice must be given at least ten days before the date by which the shareholder must exercise a preemptive right and must contain:
 - a. The number or amount of securities with respect to which the shareholder has a preemptive right, and the method used to determine that number or amount;
 - b. The price and other terms and conditions upon which the shareholder may purchase them; and
 - c. The time within which and the method by which the shareholder must exercise the right.
8. Securities that are subject to preemptive rights but not acquired by shareholders in the exercise of those rights may, for a period not exceeding one year after the date fixed by the board for the exercise of those preemptive rights, be issued to persons the board determines, at a price not less than, and on terms no more favorable to the purchaser than, those offered to the shareholders. Securities that are not issued during that one-year period shall, at the expiration of the period, again become subject to preemptive rights of shareholders.
9. No amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

10-19.1-66. Share certificates - Issuance and contents.

1. The shares of a corporation must be represented by certificates signed by the president or by a vice president and by the secretary, or by an assistant secretary of the corporation.
2. If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.
3. Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class must set forth upon the face or back of the certificate, or must state that the corporation will furnish to any shareholders upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class or series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board to fix and determine the relative rights and preferences of subsequent series. Each certificate representing shares must state upon its face:
 - a. The name of the corporation.
 - b. That the corporation is organized under the laws of this state.
 - c. The name of the person to whom issued.
 - d. The number and class of shares, and the designation of the series, if any, which such certificate represents.
 - e. The par value of such share represented by such certificate, or a statement that the shares are without par value.
4. A certificate signed as provided in subsection 1 is prima facie evidence of the ownership of the shares referred to in the certificate.

10-19.1-67. Lost share certificates - Replacement.

1. A new share certificate may be issued pursuant to section 41-08-41 in place of one that is alleged to have been lost, stolen, or destroyed.
2. The issuance of a new certificate under this section does not constitute an overissue of the shares it represents.

10-19.1-68. Fractional shares.

1. A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, it shall in connection with an original issuance of shares:
 - a. Arrange for the disposition of fractional interests by those entitled to them;
 - b. Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or
 - c. Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.
2. A corporation may not pay money for fractional shares if that action would result in the cancellation of more than twenty percent of the outstanding shares of a class. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

10-19.1-69. Liability of subscribers and shareholders with respect to shares. A holder of or subscriber for shares of a corporation is under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration of which such shares were issued or to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or

notice that the full consideration therefore has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

A personal representative, conservator, guardian, trustee, assignee for the benefit of creditors, or a receiver is not personally liable to the corporation as a holder of or subscriber for shares of a corporation but the estate and funds in said person's hands are liable.

No pledgee or other holder of shares as collateral security is personally liable as a shareholder.

10-19.1-70. Restriction on transfer or registration of securities.

1. A restriction on the transfer or registration of transfer of securities of a corporation may be imposed in the articles, in the bylaws, by a resolution adopted by the shareholders, or by an agreement among or other written action by a number of shareholders or holders of other securities or among them and the corporation. A restriction is not binding with respect to securities issued prior to the adoption of the restriction, unless the holders of those securities are parties to the agreement or voted in favor of the restriction.
2. A written restriction on the transfer or registration of transfer of securities of a corporation that is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

10-19.1-71. Regular meetings of shareholders.

1. Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by subsection 2.
2. If a regular meeting of shareholders has not been held during the immediately preceding fifteen months, a shareholder or shareholders holding five percent or more or the voting power of all shares entitled to vote may

demand a regular meeting of shareholders by written notice of demand given to the president or secretary of the corporation. Within thirty days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to be called. If the board fails to cause a regular meeting to be called as required by this subsection, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by section 10-19.1-73. All necessary expenses of the notice and the meeting must be paid by the corporation.

3. A regular meeting, if any, must be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subsection 2 must be held in the county where the principal executive office of the corporation is located.
4. At each regular meeting of shareholders there must be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the shareholders may be transacted at a regular meeting.

10-19.1-72. Special meetings of shareholders.

1. Special meetings of the shareholders may be called for any purpose or purposes at any time, by:
 - a. The president;
 - b. Two or more directors;
 - c. A person authorized in the articles or bylaws to call special meetings; or
 - d. A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote.
2. A shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote may demand a special meeting of shareholders by written notice of demand given to the president or secretary of the corporation and containing the purposes of the meeting. Within thirty days after receipt by one of those officers of the demand, the board shall cause a special meeting of shareholders to be called. If the board fails to cause a special meeting to be called as required by this

subsection, the shareholder or shareholders making the demand may call the special meeting by giving notice as required by section 10-19.1-73. All necessary expenses of the notice and the meeting shall be paid by the corporation.

3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subsection 2 must be held in the county where the principal executive office is located.
4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with subsection 4 of section 10-19.1-73.

10-19.1-73. Notice.

1. Notice of all meetings of shareholders must be given to every holder of shares entitled to vote, except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment.
2. The notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting.
3. The notice must contain the date, time, and place of the meeting, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.
4. A shareholder may waive notice of a meeting of shareholders. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be

considered at that meeting and does not participate in the consideration of the item at that meeting.

10-19.1-74. Act of the shareholders.

1. The shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except where this chapter or the articles require a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.
2. In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares of that class or series as is required pursuant to subsection 1.

10-19.1-75. Action without a meeting. An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action. The written action is effective when it has been signed by all of those shareholders, unless a different effective time is provided in the written action.

10-19.1-76. Quorum. The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. In no event may a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum.

10-19.1-77. Voting rights.

1. The board may fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.
2. A resolution approved by the affirmative vote of a majority of the directors present may establish a procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the

account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.

3. Unless otherwise provided in the articles or bylaws or in the terms of the shares, a shareholder has one vote for each share held.
4. The articles may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.
5. Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.
6. Except as provided in subsection 5, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

10-19.1-78. Voting list. The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to the meeting, must be kept on file at the registered office of the corporation and is subject to inspection by any shareholder at any time during usual business hours. The list must also be produced and kept open at the time and place of the meeting and is subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books are prima facie evidence as to who are the shareholders entitled to examine the lists or transfer books or to vote at any meeting of shareholders. Failure to comply with the requirements of this section does not affect the validity of any action taken at the meeting. Any officer or agent having charge of the stock transfer books who fails to prepare the list of shareholders, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting, as provided in this section, is liable to any shareholder suffering damage on account of such failure, to the extent of such damage. The provisions of chapter 10-18, except where in conflict with this section, apply and control the transfer of shares.

10-19.1-79. Voting of shares by organizations and legal representatives.

1. Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the president or another legal representative of that corporation.
2. Except as provided in subsection 3, shares of a corporation registered in the name of a subsidiary are not entitled to vote on any matter.
3. Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation binding instructions on how to vote the shares.
4. Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney in fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian may not vote shares held by the person unless they are registered in the name of the person.
5. Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.
6. Shares registered in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.
7. A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee.

10-19.1-80. Proxies.

1. A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. An appointment of a proxy

- for shares held jointly by two or more shareholders is valid if signed by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.
2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest, including a security interest, in the shares or in the corporation.
 3. An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it may not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with an officer of the corporation, or by filing a new written appointment of a proxy with an officer of the corporation. Termination in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.
 4. The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by an officer of the corporation before the proxy exercises the authority under that appointment.
 5. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:
 - a. Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and
 - b. If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares must be voted as a majority of the proxies determine. If the proxies are equally divided, the shares may not be voted.
 6. Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the corporation may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

10-19.1-81. Voting trusts.

1. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding ten years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A signed original of the agreement must be filed with the corporation.
2. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in subsection 5 of section 10-19.1-77.

10-19.1-82. Shareholder voting agreements. A written agreement solely among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 10-19.1-80 regarding proxies and is not subject to the provisions of section 10-19.1-81 regarding voting trusts.

10-19.1-83. Shareholder control agreements.

1. A written agreement solely among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subsections 2 and 3.
2. A written agreement solely among persons described in subsection 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

3. The agreement is enforceable by the persons described in subsection 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A signed original of the agreement must be filed with the corporation. The existence and location of a copy of the agreement must be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement. A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.
4. The effect of an agreement authorized by this section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts or omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the directors in the management of the business and affairs of the corporation are exercised by the shareholders under a provision in the agreement. A shareholder is not liable pursuant to this subsection by virtue of a shareholder vote, if the shareholder had no right to vote on the action.
5. This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

10-19.1-84. Books and records - Inspection.

1. A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder. A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the dates on which certificates were issued.
2. A corporation shall keep at its principal executive office, or, if its principal executive office is outside of this state, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5 originals or copies of:

- a. Records of all proceedings of shareholders for the last three years;
 - b. Records of all proceedings of the board for the last three years;
 - c. Its articles and all amendments currently in effect;
 - d. Its bylaws and all amendments currently in effect;
 - e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
 - f. Reports made to shareholders generally within the last three years;
 - g. A statement of the names and usual business addresses of its directors and principal officers;
 - h. Voting trust agreements described in section 10-19.1-81; and
 - i. Shareholder control agreements described in section 10-19.1-83.
3. A corporation shall keep appropriate and complete financial records.
 4. A shareholder or a holder of a voting trust certificate has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time:
 - a. The share register; and
 - b. All documents referred to in subsection 2.
 5. A shareholder or a holder of a voting trust certificate who has been a shareholder for at least six months immediately preceding the shareholder's demand or who is the holder of record of at least five percent of all the outstanding shares of the corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination. A "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

6. On application of the corporation, a court in this state may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. If a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate.
7. Copies of all documents referred to in subsection 2 must be furnished at the expense of the corporation. A copy of the most recently generated share register must be furnished at the expense of the corporation if the requesting party shows a proper purpose. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.
8. The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subsection 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subsection 7. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

10-19.1-85. Financial statements. A corporation shall, upon written request by a shareholder, furnish annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which must be prepared on the basis of accounting methods reasonable in

the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the corporation's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

10-19.1-86. Actions by shareholders. No action may be brought in this state by a shareholder in the right of a domestic or foreign corporation unless plaintiff is a holder of record of shares or voting trust certificates at the time of the transaction of which plaintiff complains, or the plaintiff's shares or voting trust certificates thereafter devolved upon the plaintiff by operation of law from a person who was a holder of record at such time:

1. In any action thereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of the corporation or voting trust certificates, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.
2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of the corporation or voting trust certificates, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought is entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The corporation has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or

not the court finds the action was brought without reasonable cause.

10-19.1-87. Rights of dissenting shareholders.

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
 - a. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
 - b. A plan of merger to which the corporation is a party, except as provided in subsection 3;
 - c. A plan of exchange pursuant to which the shares of the corporation are to be acquired; or
 - d. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.
2. A shareholder may not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter must be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders. The beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and must be treated as a dissenting shareholder under the terms of this section and section 10-19.1-88, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

3. The right to obtain payment under this section does not apply to the shareholders of the surviving corporation in a merger or of the acquiring corporation in an exchange, if a vote of the shareholders of the corporation is not necessary to authorize the merger or exchange.
4. The shareholders of a corporation who have a right under this section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subsection 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

10-19.1-88. Procedures for asserting dissenters' rights.

1. If a corporation calls a shareholder meeting at which any action described in subsection 1 of section 10-19.1-87 is to be voted upon, the notice of the meeting must inform each shareholder of the right to dissent and must include a copy of section 10-19.1-87 and this section.
2. The shareholder of a corporation which is a party to an action described in subsection 1 of section 10-19.1-87 shall file with the corporation, prior to or at the meeting of shareholders at which the action is submitted to a vote, a written objection to the action and may not vote in favor of the action.
3. The shareholder, within ten days after the date on which the vote was taken, shall make written demand on the corporation for payment of the fair value of the shares as of the day prior to the day on which the vote was taken approving the action. The demand must state the number and class of shares owned by the dissenting shareholder. Any shareholder failing to make demand within the ten-day period is bound by the action.
4. If the action is effected, the corporation shall pay to the shareholder, upon surrender of the shareholder's certificate or certificates representing the shares, the fair value of the shares.
5. Within ten days after the action is effected, the corporation shall give notice of the action to each dissenting shareholder who has made demand as provided in this section.
6. If within thirty days after the date on which the action was effected, the value of the shares is agreed upon between the dissenting shareholder and the corporation, payment for the shares must be made within ninety days after the date on which the action was effected, upon the surrender of the shareholder's certificate or certificates representing the shares. Upon payment of the agreed

value, the dissenting shareholder shall cease to have any interest in the shares or in the corporation.

7. If within the period of thirty days the shareholder and the corporation do not agree on the value of the shares, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, bring an action in any court of competent jurisdiction asking for a finding and determination of the fair value of the shares and is entitled to judgment against the corporation for the amount of the fair value as of the day prior to the day on which the vote was taken approving the action, together with interest to the date of the judgment. The judgment is payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing the shares. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in these shares or in the corporation. Unless the dissenting shareholder files the petition within the time permitted the shareholder and all persons claiming under the shareholder are bound by the action.

10-19.1-89. Loans - Guarantees - Suretyship.

1. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist any person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:
- a. Is in the usual and regular course of business of the corporation;
 - b. Is with, or for the benefit of, a related corporation, an organization in which the corporation has a financial interest, all organizations with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;
 - c. Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
 - d. Has been approved by the affirmative vote of the holders of two-thirds of the outstanding shares.
2. A loan, guaranty, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any

manner, including, without limitation, a grant of a security interest in shares of the corporation.

3. This section does not grant any authority to act as a bank or to carry on the business of banking.

10-19.1-90. Advances. A corporation may, without a vote of the directors, advance money to its directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

10-19.1-91. Indemnification.

1. For purposes of this section, the terms defined in this subsection have the meanings given them.

a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

b. "Official capacity" means:

(1) With respect to a director, the position of director in a corporation;

(2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment or agency relationship undertaken by an employee or agent of the corporation; and

(3) With respect to a director, officer, employee, or agent of the corporation who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

- d. "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a director, officer, employee, or agent whose indemnification is in issue.
2. Subject to subsection 5, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:
- a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omission;
- b. Acted in good faith;
- c. Received no improper personal benefit and section 10-19.1-51, if applicable, has been satisfied;
- d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
- e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
4. Subject to subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately determined that the criteria for indemnification have not been satisfied; and
 - b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

5. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including, without limitation, monetary limits on indemnification or advances for expenses, if the conditions apply equally to all persons or to all persons within a given class.
6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.
7. All indemnification determinations must be made:
 - a. By the board by a majority of a quorum. Directors who are at the time parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;

- b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;
 - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
 - d. If a determination is not made under subdivisions a, b, and c, by the shareholders, excluding the votes of shares held by parties to the proceeding; or
 - e. If an adverse determination is made under subdivisions a through d, or if no determination is made under subdivisions a through d within sixty days after the termination of a proceeding or after a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.
8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.
 9. A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.
 10. A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with

a proceeding by or on behalf of the corporation shall report the amount of the indemnification or advance and to whom and on whose behalf it was paid as part of the annual financial statements furnished to shareholders pursuant to section 10-19.1-85 covering the period when the indemnification or advance was paid or accrued under the accounting method of the corporation reflected in the financial statements.

10-19.1-92. Distributions.

1. The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subsection 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous, and the corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution shall be measured in accordance with subsection 3. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.
2. A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-19.1-50 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-19.1-50 or 10-19.1-95 will accrue if the requirements of this subsection have been met.
3. In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred

twenty days following the date of authorization. The provisions of chapter 13-02 do not apply to distributions made by a corporation governed by this chapter.

4. Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related corporation, or subject to any other agreement between the corporation and the shareholder.
5. A distribution may be made to the holders of a class or series of shares only if:
 - a. All amounts payable to the holders of shares having a preference for the payment of that kind of distribution are paid; and
 - b. The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless the distribution is made to those shareholders in the order and to the extent of their respective priorities.
6. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes.

10-19.1-93. Power to acquire shares.

1. A corporation may acquire its own shares, subject to section 10-19.1-92. Shares so acquired constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.
2. If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the secretary of state a statement of cancellation showing the reduction in the authorized shares. The statement must contain:
 - a. The name of the corporation;

- b. The number of acquired shares canceled, itemized by classes and series; and
- c. The aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

10-19.1-94. Liability of shareholders for illegal distributions.

1. A shareholder who knows or should have known that a distribution was made in violation of section 10-19.1-92 is liable to the corporation, its receiver or other person winding up its affairs, or a director under subsection 2 of section 10-19.1-95 but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under section 10-19.1-92.
2. An action may not be commenced under this section more than two years from the date of the distribution.

10-19.1-95. Liability of directors for illegal distributions.

1. In addition to any other liabilities, a director who is present and votes for or fails to vote against, except a director who is prohibited by section 10-19.1-51 from voting on the distribution, or who consents in writing to, a distribution made in violation of section 10-19.1-92 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 10-19.1-50, is liable to the corporation jointly and severally with all other directors so liable and to other directors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-19.1-92.
2. A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-19.1-94.
3. A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors who voted for or consented in writing to the distribution and who failed to comply with the standard of conduct provided in section 10-19.1-50, and may compel pro rata contribution from them in that action.

4. An action may not be commenced under this section more than two years from the date of the distribution.

10-19.1-96. Merger - Exchange - Transfer.

1. Any two or more corporations may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.

2. The shares of one or more classes or series of a corporation may be exchanged for shares of the same or a different class or series of one or more other corporations pursuant to a plan of exchange approved in the manner provided in sections 10-19.1-97, 10-19.1-98, 10-19.1-101, 10-19.1-102, and 10-19.1-103.

3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 10-19.1-104.

10-19.1-97. Plan of merger or exchange.

1. A plan of merger or exchange must contain:

a. The names of the corporations proposing to merge or participate in an exchange and:

(1) In the case of a merger, the name of the surviving corporation;

(2) In the case of an exchange, the name of the acquiring corporation;

b. The terms and conditions of the proposed merger or exchange;

c. In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or in the case of an exchange, the manner and basis of exchanging the shares of other constituent corporations for shares of the acquiring corporation;

d. In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

e. Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

2. The procedure authorized by this section does not limit the power of a corporation to acquire for money or property other than its shares all or part of the shares of a class or series of another corporation by a negotiated agreement with the shareholders of the other corporation.

10-19.1-98. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and must then be submitted to the shareholders of each constituent corporation at a regular or a special meeting. Written notice must be given to every shareholder, whether or not entitled to vote at the meeting, no fewer than fourteen days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

2. At the meeting a vote of the shareholders must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is affected by the plan of exchange.

3. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of shareholders of a surviving or acquiring corporation is not required if:

a. The articles of the corporation will not be amended in the transaction;

b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;

c. The number of shares of the corporation entitled to vote immediately after the merger or exchange, plus the number of shares of the corporation entitled to vote issuable on conversion or exchange of securities other than shares or on the exercise of rights to

purchase securities issued by virtue of the terms of the transaction, will not exceed by more than twenty percent, or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles, the number of shares of the corporation entitled to vote immediately before the transaction, and

- d. The number of participating shares of the corporation immediately after the transaction, plus the number of participating shares of the corporation issuable on conversion or exchange of, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent, or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

10-19.1-99. Articles of merger - Certificate.

1. Upon receiving the approval required by section 10-19.1-98, articles of merger must be prepared that contain:

a. The plan of merger; and

b. For each corporation either:

- (1) A statement that the plan has been approved by a vote of the shareholders pursuant to subsection 2 of section 10-19.1-98; or
- (2) A statement that a vote of the shareholders is not required by virtue of subsection 3 of section 10-19.1-98.

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.

3. The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative. The certificate must contain the effective date of merger.

10-19.1-100. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding shares of each class and series of a subsidiary may merge

the subsidiary into itself without a vote of the shareholders of either corporation. A resolution approved by the affirmative vote of a majority of the directors of the parent present must set forth a plan of merger that contains:

- a. The name of the subsidiary and the name of the parent; and
 - b. The manner and basis of converting the shares of the subsidiary into securities of the parent or of another corporation or, in whole or in part, into money or other property.
2. A copy of the plan of merger must be mailed to each shareholder, other than the parent, of the subsidiary.
3. Articles of merger must be prepared that contain:
- a. The plan of merger;
 - b. The number of outstanding shares of each class and series of the subsidiary and the number of shares of each class and series owned by the parent; and
 - c. The date a copy of the plan of merger was mailed to shareholders, other than the parent, of the subsidiary.
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.
5. The secretary of state shall issue a certificate of merger to the parent or its legal representative. The certificate must contain the effective date of the merger.

10-19.1-101. Abandonment of plan of merger or exchange.

1. After a plan of merger or exchange has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation and before the effective date of the plan, it may be abandoned:
 - a. If the shareholders of each of the constituent corporations have considered abandoning the plan and the abandonment has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation;

- b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
 - c. Pursuant to subsection 2.
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.

If the certificate of merger has been issued, the board shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

10-19.1-102. Effective date of merger or exchange - Effect.

- 1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.
- 2. When a merger becomes effective:
 - a. The constituent corporations become a single corporation, the surviving corporation.
 - b. The separate existence of all constituent corporations except the surviving corporation ceases.
 - c. The surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter.
 - d. The surviving corporation possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the

constituent corporations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the constituent corporations vests in the surviving corporation without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent corporation by its current officers or, if the corporation no longer exists, by its last officers. The title to any real estate or any interest therein vested in any of the constituent corporations does not revert nor in any way become impaired by reason of the merger.

- e. The surviving corporation is responsible and liable for all the liabilities and obligations of each of the constituent corporations. A claim of or against or a pending proceeding by or against a constituent corporation may be prosecuted as if the merger had not taken place, or the surviving corporation may be substituted in the place of the constituent corporation. Neither the rights of creditors nor any liens upon the property of a constituent corporation are impaired by the merger.
- f. The articles of the surviving corporation are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

- 3. When a merger or exchange becomes effective, the shares of the corporation or corporations to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The holders of those shares are entitled only to the securities, money, or other property into which those shares have been converted or for which those shares have been exchanged in accordance with the plan, subject to any dissenter's rights under section 10-19.1-87.

10-19.1-103. Merger or exchange with foreign corporation.

- 1. A domestic corporation may merge with or participate in an exchange with a foreign corporation by following the procedures set forth in this section, if the merger or exchange is permitted by the laws of the state under which the foreign corporation is incorporated.
- 2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96 through 10-19.1-103 with respect to the merger or exchange of shares of corporations and each foreign corporation shall comply with the applicable

provisions of the laws under which it was incorporated or by which it is governed.

3. If the surviving corporation in a merger will be a domestic corporation, it shall comply with this chapter.
4. If the surviving corporation in a merger will be a foreign corporation and will transact business in this state, it shall comply with the provisions of chapter 10-22 with respect to foreign corporations. In every case the surviving corporation shall file with the secretary of state:
 - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent corporation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving corporation;
 - b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and
 - c. An agreement that it will promptly pay to the dissenting shareholders of each domestic constituent corporation the amount, if any, to which they are entitled under section 10-19.1-87.

10-19.1-104. Transfer of assets - When permitted.

1. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, in which case no shareholder approval is required.
2. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a

majority of the voting power of the shares entitled to vote. Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

10-19.1-105. Methods of dissolution. A corporation may be dissolved:

1. By the incorporators pursuant to section 10-19.1-106;
2. By the shareholders pursuant to sections 10-19.1-107 through 10-19.1-113; or
3. By order of a court pursuant to sections 10-19.1-114 through 10-19.1-122.

10-19.1-106. Voluntary dissolution by incorporators. A corporation that has not issued shares may be dissolved by the incorporators in the manner set forth in this section:

1. A majority of the incorporators shall sign articles of dissolution containing:
 - a. The name of the corporation;
 - b. The date of incorporation;
 - c. A statement that shares have not been issued;
 - d. A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and
 - e. A statement that no debts remain unpaid.
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.

3. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.
4. The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the articles of dissolution were filed with the secretary of state; and
 - c. A statement that the corporation is dissolved.

10-19.1-107. Voluntary dissolution by shareholders. A corporation may be dissolved by the shareholders when authorized in the manner set forth in this section:

1. Written notice must be given to each shareholder, whether or not entitled to vote at a meeting of shareholders within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.
2. The proposed dissolution must be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution must be commenced.

10-19.1-108. Filing notice of intent to dissolve - Effect.

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.
2. When the notice of intent to dissolve has been filed with the secretary of state, and subject to section 10-19.1-112, the corporation shall cease to carry on its

business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution proceedings in accordance with section 10-19.1-112 and the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.

3. The filing with the secretary of state of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in section 10-19.1-124.

10-19.1-109. Procedure in dissolution.

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:
 - a. To collect or make provisions for the collection of all debts due or owing to the corporation, including unpaid subscriptions for shares; and
 - b. To pay or make provision for the payment of all debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-19.1-104, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.
3. All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed to the shareholders in accordance with subsection 4 of section 10-19.1-92.

10-19.1-110. Notice to creditors and claimants.

1. When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each known creditor of and claimant against the corporation at the last known address of each known present, future, or contingent creditor and claimant. The corporation may give published notice to known creditors or claimants whose address is unknown and to unknown present, future, or contingent creditors and claimants, by

publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located.

2. The notice to creditors and claimants must contain:

- a. A statement that the corporation is in the process of dissolving;
- b. A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;
- c. The date of filing the notice of intent to dissolve;
- d. The address of the office to which written claims against the corporation must be presented; and
- e. The date by which all the claims must be received, which must be the later of ninety days after the notice of intent to dissolve was filed with the secretary of state or, with respect to a particular creditor or claimant, ninety days after the date on which notice was given to that creditor or claimant.

10-19.1-111. Claims in dissolution.

1. If the corporation gives proper notice to creditors and claimants pursuant to section 10-19.1-110:

- a. The claim of a creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is subject to the provisions of section 10-19.1-124;
- b. The corporation has thirty days from the receipt of each claim to accept or reject the claim by giving written notice to the person submitting it; a claim not expressly rejected in this manner is deemed accepted; and
- c. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has sixty days from the date of rejection, or one hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve, whichever is longer, to pursue any other remedies with respect to the claim. If the creditor or claimant does not initiate legal proceedings with respect to the claim during that period, the claim is subject to section 10-19.1-124.

2. The claim of a creditor or claimant to whom notice is not given and who does not initiate legal proceedings, concerning the claim within two years after the date of filing the notice of intent to dissolve is thereafter subject to the provisions of 10-19.1-124.

10-19.1-112. Revocation of dissolution proceedings.

1. Dissolution proceedings commenced pursuant to section 10-19.1-107 may be revoked prior to filing of articles of dissolution.
2. Written notice must be given to every shareholder entitled to vote at a shareholders' meeting within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation must be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.
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.

10-19.1-113. Articles of dissolution - Certificate of dissolution - Effect.

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;
 - 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 two-year period described in subsection 2 of section 10-19.1-111 has expired.
2. The articles of dissolution must state:
 - a. Whether notice has been given to all creditors and claimants of the corporation in the manner provided in

section 10-19.1-110, and, if notice has been given, the last date on which the notice was given and the date on which the longer of the periods described in subdivision c of subsection 1 of section 10-19.1-111 expired;

- b. That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provisions have been made therefor;
- c. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 4 of section 10-19.1-92 or that adequate provision has been made for that distribution; and
- d. That there are no pending legal proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding, and that all other claims are barred under section 10-19.1-124.

3. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.

4. The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

- a. The name of the corporation;
- b. The date the articles of dissolution were filed with the secretary of state; and
- c. A statement that the corporation is dissolved.

10-19.1-114. Supervised voluntary dissolution. After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, or for good cause shown, a shareholder or creditor may apply to a court within the county in which the principal executed office or the registered office of the corporation is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 10-19.1-115 through 10-19.1-124.

10-19.1-115. Involuntary dissolution.

1. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

- a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;

b. In an action by a shareholder when it is established that:

- (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;
- (2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation;
- (3) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
- (4) The corporate assets are being misapplied or wasted; or
- (5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124.

c. In an action by a creditor when:

- (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
- (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.

2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.

3. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.
4. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.
5. Proceedings under this section must be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

10-19.1-116. Procedure in involuntary or supervised voluntary dissolution.

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.
2. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.
3. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge or:
 - a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;

- b. Debts, taxes and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
 - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workmen's compensation insurance, as provided by law, at the time the injury was sustained;
 - d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
 - e. Other claims duly proved and allowed.
4. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed to the shareholders in accordance with subsection 4 of section 10-19.1-92.

10-19.1-117. Qualifications of receivers - Powers.

- 1. A receiver must be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. A receiver shall give bond as directed by the court with the sureties required by the court.
- 2. A receiver may sue and defend in all courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

10-19.1-118. Action by attorney general.

- 1. A corporation may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general when it is established that:
 - a. The articles and certificate of incorporation were procured through fraud;
 - b. The corporation was incorporated for a purpose not permitted by section 10-19.1-08;
 - c. The corporation failed to comply with the requirements of sections 10-19.1-02 through 10-19.1-24 essential to incorporation under or election to become governed by this chapter;

- d. The corporation has failed for thirty days to appoint and maintain a registered agent in this state;
 - e. The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change; or
 - f. The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.
2. An action may not be commenced under this section until thirty days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.

10-19.1-119. Filing claims in proceedings to dissolve.

1. In proceedings referred to in section 10-19.1-115 to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims under oath with the clerk of court or with the receiver in a form prescribed by the court.
2. If the court requires the filing of claims, it shall fix a date, which may not be less than one hundred twenty days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the corporation.

10-19.1-120. Discontinuance of dissolution proceedings. The involuntary or supervised voluntary dissolution of a corporation must be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

10-19.1-121. Decree of dissolution.

1. In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all

debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in section 10-19.1-116, the court shall enter a decree dissolving the corporation.

2. When the decree dissolving the corporation has been entered, the corporation is dissolved.

10-19.1-122. Filing decree. After the court enters a decree dissolving a corporation, the clerk of court shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

10-19.1-123. Deposit with state treasurer of amount due certain shareholders - Appropriation. Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, must be reduced to money and deposited with the state treasurer for disposition pursuant to chapter 47-30. The amount deposited is appropriated to the state treasurer and must be paid over to the shareholder or a legal representative, upon proof satisfactory to the state treasurer of a right to payment.

10-19.1-124. Claims barred - Exceptions.

1. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal proceeding within the time provided in section 10-19.1-111, 10-19.1-114, 10-19.1-115, or 10-19.1-119, or has not initiated a legal proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.
2. At any time within one year after articles of dissolution have been filed with the secretary of state, or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:
 - a. Against the corporation to the extent of undistributed assets; or

- b. If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder.
3. All debts, obligations, and liabilities incurred during dissolution proceedings shall be paid by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers, directors, and shareholders of the corporation before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

10-19.1-125. Right to sue or defend after dissolution. After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation.

10-19.1-126. Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by a court in this state.

10-19.1-127. Extension after duration expired.

1. A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, within one year after the date of expiration by filing an amendment to the articles as set forth in this section.
2. An amendment to the articles is approved by the affirmative vote of a majority of the directors present and must include:
- a. The date on which the period of duration expired under the articles;
- b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and
- c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

3. The amendment to the articles must be presented, after notice, to a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to section 10-19.1-19.
4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-19.1-21 must be filed with the secretary of state.

10-19.1-128. Effect of extension. Filing with the secretary of state of articles of amendment extending the period of duration of a corporation:

1. Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;
2. Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and
3. Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

10-19.1-129. Service of process on corporation and nonresident directors.

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent of the corporation, or upon an officer of the corporation, or upon the secretary of state as provided in this section.
3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer can be found at the registered office must be provided to the

secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in chapter 10-23. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

4. A record of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it must be maintained in the office of the secretary of state.
5. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

10-19.1-130. State interested - Proceedings. If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

10-19.1-131. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:
 - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.].
 - b. "Private corporation" means a corporation authorized under this chapter, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.

c. "Public corporation" means this state; a political subdivision of this state, any municipality of this state; any public agency of this state, of any political subdivision of this state, or any municipality of this state, or any other corporate instrumentality of this state.

2. Any private corporation or public corporation has the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules.

* SECTION 4. AMENDMENT. Section 10-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-01. Admission of foreign corporation. No foreign corporation shall have the right to transact business in this state until it shall have 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 transact in this state any business which a corporation organized under chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation. Any corporation which submits a bid or offer to construct any part or portion of a public or private building, road, airport, or other installation, shall file a notice of intention to do business in the state with the secretary of state.

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ only, by reason of carrying on 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 shareholders or carrying on other activities concerning its internal affairs.

* NOTE: Section 10-22-01 was also amended by section 1 of Senate Bill No. 2107, chapter 148.

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, whether by mail or through employees or agents or otherwise, where such orders require acceptance without 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 the same.
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 establish a standard for activities which may or may not subject a foreign corporation to taxation or service of process.

* SECTION 5. AMENDMENT. Section 10-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-02. Powers of foreign corporation. A foreign corporation which shall have received a certificate of authority shall, until a certificate of revocation or withdrawal shall have been issued, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued. Except as otherwise provided in chapters 10-19 through 10-19.1, 10-22, and 10-23 otherwise provided, a foreign corporation shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

** SECTION 6. AMENDMENT. Section 10-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-03. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words, or such corporation

* NOTE: Section 10-22-02 was also amended by section 2 of Senate Bill No. 2107, chapter 148.

** NOTE: Section 10-22-03 was also amended by section 3 of Senate Bill No. 2107, chapter 148.

shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

2. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.
3. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in chapter ~~10-19~~ 10-19.1, or the name of a corporation which has in effect a registration of its name.

* SECTION 7. AMENDMENT. Section 10-22-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-05. Application for certificate of authority. A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall apply to the secretary of state. The application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. If the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state.
3. The date of incorporation and the period of duration of the corporation.
4. The address of the principal office of the corporation in the state or country under the laws of which 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 at such address.
6. The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state.
7. The names and respective addresses of the directors and officers of the corporation.

* NOTE: Section 10-22-05 was also amended by section 5 of Senate Bill No. 2107, chapter 148.

8. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
9. 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.
10. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in chapter ~~10-19~~ 10-19.1.
11. An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this state during such year.
12. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine the fees payable as prescribed in chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 prescribed.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary.

* SECTION 8. AMENDMENT. Section 10-22-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as prescribed in chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 prescribed:

1. Endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof.

* NOTE: Section 10-22-06 was also amended by section 6 of Senate Bill No. 2107, chapter 148.

2. File in his office one of such duplicate originals of the application and the certificate of good standing.
3. Issue a certificate of authority to transact business 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, shall be returned to the corporation or its representative.

* SECTION 9. AMENDMENT. Section 10-22-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-07. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23.

** SECTION 10. AMENDMENT. Section 10-22-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-15. Filing of application for withdrawal. Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of section 10-22-14, he shall, when all fees have been paid as prescribed in chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 prescribed:

1. Endorse on each of such duplicate originals 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 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 certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

*** SECTION 11. AMENDMENT. Section 10-22-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-16. Revocation of certificate of authority. The certificate of authority of a foreign corporation to transact business in this

- * NOTE: Section 10-22-07 was also amended by section 7 of Senate Bill No. 2107, chapter 148.
- ** NOTE: Section 10-22-15 was also amended by section 14 of Senate Bill No. 2107, chapter 148.
- *** NOTE: Section 10-22-16 was also amended by section 15 of Senate Bill No. 2107, chapter 148.

state may be revoked by the secretary of state upon any of the following conditions:

1. The corporation has failed to file its annual report within the time required, or has failed to pay any fees or penalties prescribed by chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23 when they have become due and payable.
2. The corporation has failed to appoint and maintain a registered agent in this state as required by section 10-22-08.
3. The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by section 10-22-09.
4. The corporation has failed to file in the office of the secretary of state any certificate of amendment to its articles of incorporation or any certificate of merger within the time as prescribed by section 10-19-62 10-19.1-23.
5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (1) he shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and (2) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such certificate of amendment or certificate of merger, or correct such misrepresentation.

* SECTION 12. AMENDMENT. Section 10-22-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-18. Application to corporations heretofore authorized to transact business in this state. Foreign corporations which are duly authorized to transact business in this state, for a purpose or purposes for which a corporation might secure such authority under the provisions of this chapter, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23, and from the time chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23 take effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations

* NOTE: Section 10-22-18 was repealed by section 18 of Senate Bill No. 2107, chapter 148.

procuring certificates of authority to transact business in this state.

SECTION 13. AMENDMENT. Section 10-23-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-09. Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23.

SECTION 14. AMENDMENT. Section 10-23-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-11. Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer ~~the provisions of~~ chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 efficiently and to perform the duties therein imposed upon him.

SECTION 15. AMENDMENT. Section 10-23-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-12. Appeal from secretary of state. If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be,

situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state. The matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of section 10-22-16, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

SECTION 16. AMENDMENT. Section 10-23-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-13. Certificates and certified copies to be received in evidence. All certificates issued by the secretary of state and all copies of documents filed in his office in accordance with ~~the provisions of chapters 10-19 through 10-19.1, 10-22, and 10-23,~~ when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

SECTION 17. AMENDMENT. Section 10-23-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-14. Forms to be furnished by secretary of state. All reports required by chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ to be filed in the office of the secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state shall be furnished by the secretary of state on request therefor, but the use thereof, unless otherwise specifically provided by law, shall not be mandatory.

SECTION 18. AMENDMENT. Section 10-23-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-15. Application of chapters. All foreign and domestic corporations for profit are governed by chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23, except profit corporations governed by special statutes, such as public utility, insurance, banking, cooperative, building and loan, annuity, safe deposit, surety, and trust companies, which are subject to the provisions of those special statutes except insofar as reference is made to the general law governing corporations or to provisions of this title. Where such reference exists, chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 shall govern in that respect.

SECTION 19. AMENDMENT. Section 10-23-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-16. Application to foreign and interstate commerce. ~~The provisions of chapters 10-19 through~~ Chapters 10-19.1, 10-22, and 10-23 ~~shall~~ apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the Constitution of the United States.

SECTION 20. AMENDMENT. Section 10-23-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-17. Reservation of legislative power. The legislative assembly shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to ~~the provisions of~~ chapters 10-19 through 10-19.1, 10-22, and 10-23, and the legislative assembly shall have power to amend, repeal, or modify chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23.

Every grant of corporate power is subject to alteration, suspension, or repeal in the discretion of the legislative assembly, and any statute of this state relating to corporations may be repealed or amended, and all corporations organized under this title may be dissolved by the legislative assembly at any time. Such alteration, suspension, amendment, or repeal, or the dissolution of any corporation, shall not take away or impair any remedy given against any such corporation, its stockholders, or officers for any liability which has been previously incurred.

The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times. For that purpose, any committee appointed by the said assembly, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of a corporation, and may examine them on oath in relation to its affairs and condition, and may examine the safes, books, papers, and documents belonging to such corporation or pertaining to its affairs and condition and compel the production of all keys, books, papers,

and documents by summary process to be issued on application to any district court or any judge thereof under such rules and regulations as the court may prescribe.

SECTION 21. AMENDMENT. Section 10-30-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-05. Business Corporation Act to apply. The provisions of chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ shall apply to state development corporations as they may be applicable and not inconsistent with this chapter.

SECTION 22. AMENDMENT. Subsection 12 of section 25-03.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. "Private treatment facility" means any facility established pursuant to chapters ~~10-19 through 10-19.1, 10-22, and 10-24~~ and licensed pursuant to chapter ~~23-16 or 23-17.1~~.

SECTION 23. AMENDMENT. Subsection 4 of section 38-08.1-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued pursuant to chapter 10-22, a certificate of incorporation issued pursuant to chapter ~~10-19 10-19.1~~, or some other certificate issued by the secretary of state showing the name of the person designated as resident agent for service of process, the industrial commission shall issue to the person desiring to engage in geophysical exploration a certificate showing that the bond has been filed and showing the name of the person designated resident agent for service of process.

SECTION 24. REPEAL. Chapters 10-19, 10-20, and 10-21 of the North Dakota Century Code are hereby repealed.

SECTION 25. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 4, 1985

CHAPTER 148

SENATE BILL NO. 2107
(Olson)

FOREIGN CORPORATIONS

AN ACT to amend and reenact sections 10-22-01, 10-22-02, 10-22-03, 10-22-04, 10-22-05, 10-22-06, 10-22-07, 10-22-08, 10-22-09, 10-22-10, 10-22-12, 10-22-13, 10-22-14, 10-22-15, 10-22-16, 10-22-17, and 10-22-19 of the North Dakota Century Code, relating to foreign corporations; to repeal section 10-22-18 of the North Dakota Century Code, relating to foreign corporations; and to declare an emergency.

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

* SECTION 1. AMENDMENT. Section 10-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-01. Admission of foreign corporation. No foreign corporation shall have the right to may transact business in 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 may procure a certificate of authority under this chapter to transact in this state any business which is prohibited a corporation organized under chapters 10-19 10-19.1 through 10-23 is not permitted to transact. 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 chapters 10-19 10-19.1 through 10-23 shall be construed to authorize authorizes this state to regulate the organization or the internal affairs of such a foreign corporation. Any corporation which submits a bid or offer to construct any part or portion of a public or private building, road, airport, or other installation, shall file a notice of intention to do business in the state with the secretary of state.

Without excluding other activities which may not constitute transacting business in this state, a A foreign corporation shall is not be considered to be transacting business in this state, for the purposes of chapters 10-19 10-19.1 through 10-23 only, by reason of carrying on in this state any one or more of the following

* NOTE: Section 10-22-01 was also amended by section 4 of Senate Bill No. 2041, chapter 147.

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 ~~the a settlement thereof or the settlement of claims or disputes 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, ~~whether by mail or through employees or agents or otherwise,~~ through any means where such the orders require acceptance without 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 the same 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 establish a standard for activities which may ~~or may not subject a foreign corporation to affect the taxation of~~ or service of process on foreign corporations.

* SECTION 2. AMENDMENT. Section 10-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-02. Powers of foreign corporation. A foreign corporation which ~~shall have has~~ received a certificate of authority ~~shall,~~ until a certificate notice of revocation or certificate of withdrawal shall have been is issued, enjoy enjoys the same, ~~but no greater,~~ rights and privileges as a domestic corporation organized for the purposes set forth in the application ~~pursuant to which such~~ for a certificate of authority is issued. Except as in chapters 10-19 through 10-23 otherwise provided in chapter 10-19.1, a foreign corporation ~~shall be is~~ subject to the same duties, restrictions,

* NOTE: Section 10-22-02 was also amended by section 5 of Senate Bill No. 2041, chapter 147.

penalties, and liabilities ~~now or hereafter~~ imposed upon a similar domestic corporation of like character.

* SECTION 3. AMENDMENT. Section 10-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-03. Corporate name of foreign corporation. No A certificate of authority shall may not be issued to a foreign corporation unless the ~~corporate corporation's~~ name of such ~~corporation:~~

1. ~~Shall contain~~ Contains the word "corporation", "company", "incorporated", or "limited", or ~~shall contain~~ an abbreviation of one of such those words, or such the corporation ~~shall may~~, for use in this state, add at the end of its name one of such those words or an abbreviation thereof.
2. ~~Shall Does~~ Does not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.
3. ~~Shall Is not be~~ Is not be the same as, or deceptively similar to, the name of any domestic corporation or domestic limited partnership existing under the laws of this state or any foreign corporation or foreign limited partnership authorized to transact business in this state, or a name the exclusive right to which is, ~~at the time,~~ reserved in the manner provided in chapter ~~10-19~~ 10-19.1, or a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11, or a trade name registered with the secretary of state in the manner provided in chapter 47-25, or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state:
 - a. A resolution of its board of directors adopting a trade name for use in transacting business in this state if the trade name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter, registered as a trade name under chapter 47-25, or as a fictitious name under title 45;
 - b. Written consent of the corporation or other holder of a reserved or registered name to use the name or a deceptively similar name, when words are added to make

* NOTE: Section 10-22-03 was also amended by section 6 of Senate Bill No. 2041, chapter 147.

the new name distinguishable from the previously established name; or

- c. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state.

SECTION 4. AMENDMENT. Section 10-22-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-04. Change of name by foreign corporation. Whenever When a foreign corporation which is authorized to transact business in this state shall attempts to change its name to one under which a certificate of authority would not be granted to it on application therefor a name unavailable under the laws of this state, the certificate of authority of such the corporation shall be is suspended and it shall the corporation may not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with this chapter.

* SECTION 5. AMENDMENT. Section 10-22-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-05. Application for certificate of authority. A foreign corporation, in order to may procure a certificate of authority to transact business in this state, shall apply by applying 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 where it is incorporated.
2. if the The name of the corporation does not contain, containing the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such these words, then or the name of the corporation with the word or abbreviation which it elects to add thereto 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 under the laws of which 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 at such address.

* NOTE: Section 10-22-05 was also amended by section 7 of Senate Bill No. 2041, chapter 147.

6. The purpose or purposes of the corporation which it proposes to pursue in through the transaction of business in this state.
7. The names and respective addresses of the directors and officers of the corporation.
8. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
9. 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.
10. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in chapter 10-19.
11. An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this state during such year.
12. Such Any additional information as may be which is 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 transact business in this state and to determine the fees payable as in chapters 10-19 through 10-23 prescribed in chapter 10-23.

Such The application shall must be made on forms prescribed and furnished by the secretary of state and shall must be executed in duplicate by the corporation by its corporation's president or a vice president and by its secretary or an assistant secretary.

* SECTION 6. AMENDMENT. Section 10-22-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall must be delivered to the secretary of state, together with a certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which it where the corporation is incorporated and the consent of the

* NOTE: Section 10-22-06 was also amended by section 8 of Senate Bill No. 2041, chapter 147.

designated registered agent for service of process to serve in that capacity.

If the The secretary of state finds that such shall, upon determining that the application conforms to law, he shall, when and that all fees have been paid as in chapters 10-19 through prescribed in chapter 10-23 prescribed:

1. 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 the duplicate originals of the application and, the certificate of good standing, 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 to which he shall affix with the other duplicate original application affixed.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative:

* SECTION 7. AMENDMENT. Section 10-22-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-07. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be is authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in chapters 10-19 through 10-23 until the certificate is suspended or revoked as provided by law.

SECTION 8. AMENDMENT. Section 10-22-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-08. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

1. A registered office which may or may not be the same as its place of business in this state.
2. A registered agent, which agent who may be an individual resident in this state and whose business office is identical with such at the same location as the corporation's registered office, a domestic corporation, or a foreign corporation authorized to transact business in this state having a business office identical with such at the same location as the principal corporation's registered office.

* NOTE: Section 10-22-07 was also amended by section 9 of Senate Bill No. 2041, chapter 147.

SECTION 9. AMENDMENT. Section 10-22-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-09. Change of registered office or registered agent of foreign corporation.

1. A foreign corporation authorized to transact business 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:
 - a. The name of the corporation.
 - b. The address of its then registered office.
 - c. ~~If the address of its registered office be changed~~ When changing the address of its registered office, the address to which the registered office is to be changed.
 - d. The name of its ~~then~~ current registered agent.
 - e. ~~If~~ When changing its registered agent ~~be changed,~~ the name of its successor registered agent.
 - f. That the ~~address~~ addresses of its registered office and ~~the address of~~ the business office of its registered agent, as changed, will be identical.
 - g. That ~~such~~ the change was authorized by resolution duly adopted by its board of directors.

~~Such~~ The statement ~~shall~~ must be executed by the corporation by its president or a vice president and delivered to the secretary of state. If the registered agent is changed, the consent of the successor agent to act in that capacity must accompany the filing. If a registered agent changes ~~his or~~ its business address to a place within the same county ~~he or~~ it may change such address and the address of the registered office of any corporations of which ~~he or~~ it is the registered agent by filing a statement as required above with one copy ~~thereof~~ for each corporation listed on the certificate, except that it need be signed only by the registered agent, need not be responsive to subdivision e or g and must recite that a copy of the statement has been mailed to each ~~such~~ listed corporation. If the secretary of state finds that ~~such~~ the statement conforms ~~to the provisions of~~ with this section, ~~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.

2. Any registered agent of a foreign corporation may resign as such agent upon 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 registered office principal executive office. The appointment of such the agent shall terminate terminates upon the expiration of thirty days after receipt of such the notice by the secretary of state.

SECTION 10. AMENDMENT. Section 10-22-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-10. Service of process on foreign corporation. The A registered agent so appointed by a foreign corporation authorized to transact business in this state shall be is an agent of such the corporation upon whom for service of any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to transact business in this state shall fail fails to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be is suspended or revoked, then the secretary of state shall be is an agent of such the corporation upon whom any such for service of process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall must be made by delivering to and leaving with him the secretary of state, or with any clerk having charge of the secretary of state's corporation department of his office, duplicate the original and two copies of such the process, notice, or demand, together with the required fee and the return of the sheriff, or an affidavit of a person who is not a party, that no registered agent or officer can be found. In the event Upon service of any such process, notice, or demand is served on, the secretary of state, he shall immediately cause one of such copies a copy thereof to be forwarded by registered or certified mail addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall must be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time date of such service and his any action with reference thereto taken.

Whenever a claim shall arise arises out of business transacted in this state by a foreign corporation transacting business without a certificate of authority, service of process may be made upon any person who shall be is found within this state acting as an agent of, or doing business for, such corporation, or by mailing a copy thereof to the defendant corporation by registered or certified mail at its last known post-office address.

~~Nothing herein contained shall~~ 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 corporation in any other manner now or hereafter permitted by law.

SECTION 11. AMENDMENT. Section 10-22-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-12. Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state ~~shall be~~ is a party to a statutory merger permitted by the laws of the state or country ~~of~~ under which it is incorporated, and ~~such the~~ such corporation ~~shall be~~ is not the surviving corporation, ~~it~~ the surviving corporation shall, within thirty days after ~~such the~~ the merger becomes effective, file with the secretary of state a ~~copy of the certificate~~ certified statement of merger duly authenticated by the proper officer of the state or country ~~under~~ the laws of which such where the statutory merger was effected. It ~~shall~~ is not be necessary for ~~such any~~ any foreign corporation, ~~which is~~ a surviving corporation in a merger to procure either a new or amended certificate of authority to transact business in this state unless the name of ~~such the~~ such corporation ~~be~~ is changed thereby or unless the corporation desires to pursue in this state ~~other or~~ additional purposes ~~other~~ than those which it is ~~then~~ authorized to transact in this state.

SECTION 12. AMENDMENT. Section 10-22-13 of the North Dakota Century Code is hereby amended and reenacted to read 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 ~~in the event it when the~~ the corporation changes its corporate name, or desires to pursue in this state other or additional when purposes other than those set forth in its prior last application for a certificate of authority are sought, by making application therefor 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 ~~in respect to~~ for the form and contents of ~~such the~~ such application, the manner of its execution, the filing of duplicate originals ~~thereof~~ with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof, shall be of the amended certificate are the same as in the case of an 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 13. AMENDMENT. Section 10-22-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 10-22-14 was also amended by section 16 of Senate Bill No. 2086, chapter 82.

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 procure ~~such~~ a certificate of withdrawal, ~~such~~ a foreign corporation shall deliver to the secretary of state an application for withdrawal, which ~~shall set~~ sets forth:

1. The name of the corporation and the state or country ~~under the laws of which~~ 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 cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service ~~thereof~~ 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.
6. A statement of the aggregate number of shares which 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 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 application.
8. A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of such application.
9. ~~Such~~ Any additional information ~~as may be~~ necessary or appropriate ~~in order~~ to enable the secretary of state to determine and assess any unpaid fees payable by ~~such~~ the foreign corporation.

The application for withdrawal ~~shall~~ must be made on forms prescribed and furnished by the secretary of state and ~~shall~~ must be executed by the corporation by its president or vice president and by its secretary or ~~an~~ assistant secretary or, if the corporation is

in the hands of a receiver or trustee, ~~shall~~ must be executed on behalf of the corporation by ~~such~~ the receiver or trustee.

* SECTION 14. AMENDMENT. Section 10-22-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-15. Filing of application for withdrawal. Duplicate originals of such application for withdrawal ~~shall~~, together with the required fee, must be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of section 10-22-14, he the secretary of state shall, when all fees have been paid as in chapters 10-19 through 10-23 prescribed in chapter 10-23 have been paid:

1. Endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof.
2. ~~File~~ Retain one of ~~such~~ the duplicate originals in his office.
3. Issue to the corporation or its representative a certificate of withdrawal ~~to which he shall affix~~ with the other duplicate original affixed.

~~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 a certificate of withdrawal, the authority of the corporation to transact business in this state shall cease ceases.~~

** SECTION 15. AMENDMENT. Section 10-22-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-16. Revocation of certificate of authority. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon any of the following conditions:

1. The corporation has failed to file its annual report within the time required, or has failed to pay any fees or penalties prescribed by ~~chapters 10-19 through~~ chapter 10-23 when ~~they have become~~ due and payable.
2. The corporation has failed to appoint and maintain a registered agent in this state as required by section 10-22-08.
3. The corporation has failed, after change of its registered office or registered agent, to file ~~in the office of the secretary of state~~ a statement of ~~such~~ change as required by section 10-22-09.

* NOTE: Section 10-22-15 was also amended by section 10 of Senate Bill No. 2041, chapter 147.

** NOTE: Section 10-22-16 was also amended by section 11 of Senate Bill No. 2041, chapter 147.

4. The corporation has failed to file in the office of the secretary of state any certificate of amendment to its articles of incorporation or any certificate of merger within the time prescribed by section 10-19-62 a certified statement required to be filed with the secretary of state under sections 10-22-12 and 10-22-13.
5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters 10-19 through 10-22 and 10-23.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (1) he shall have the secretary of state has given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and (2) the corporation shall fail fails prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such certificate of amendment or certificate of merger, or correct such misrepresentation the expiration of the sixty days to remedy the condition to the satisfaction of the secretary of state. If a notice of resignation of the registered agent has been filed with the secretary of state, the notice required by this section must be sent to the principal executive office.

SECTION 16. AMENDMENT. Section 10-22-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-17. Issuance of certificate of revocation. Upon revoking any such certificate of authority, the secretary of state shall-

- 1- ~~Issue a certificate of revocation in duplicate-~~
- 2- ~~File one of such certificates in his office-~~
- 3- Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates issue a notice of revocation to the corporation. The notice must be mailed as required by section 10-22-16.

Upon the issuance of such certificate the notice of revocation, the authority of the corporation to transact business in this state ~~shall cease ceases.~~

SECTION 17. AMENDMENT. Section 10-22-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-19. Transacting business without certificate of authority. No foreign corporation transacting business in this state without a certificate of authority ~~shall be permitted to~~ may maintain any action, suit, or proceeding in any court of this state, until such

~~the~~ corporation ~~shall have~~ has obtained a certificate of authority. ~~Now shall any~~ No action, suit, or proceeding may be maintained in any court of this state by any successor or assignee of ~~such a~~ corporation on any right, claim, or demand arising out of the transaction of business by ~~such the~~ corporation in this state, until a certificate of authority ~~shall have~~ has been obtained by ~~such the~~ corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state ~~shall does~~ not impair the validity of any contract or act of ~~such the~~ corporation, and ~~shall does~~ not prevent ~~such the~~ corporation from defending any action, suit, or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority ~~shall be is~~ is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed upon ~~such the~~ foreign corporation had it duly applied for and received a certificate of authority to transact business in this state, together with any penalties for nonpayment of ~~such~~ fees.

The attorney general shall bring proceedings to recover all amounts due this state under ~~the provisions of~~ this section.

* SECTION 18. REPEAL. Section 10-22-18 of the North Dakota Century Code is hereby repealed.

SECTION 19. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 4, 1985

* NOTE: Section 10-22-18 was amended by section 12 of Senate Bill No. 2041, chapter 147.

CHAPTER 149

SENATE BILL NO. 2251
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

BUSINESS CORPORATION ACT CHANGES

AN ACT to create and enact two new sections to chapter 10-23 of the North Dakota Century Code, relating to the Business Corporation Act, or in the alternative to amend and reenact sections 10-21-13.1, 10-21-13.2, 10-23-01, 10-23-02, 10-23-03, 10-23-04, 10-23-05, and 10-23-06 of the North Dakota Century Code, relating to the Business Corporation Act; and to declare an emergency.

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

SECTION 1. A new section to chapter 10-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Failure to file annual report - Notice by secretary of state. The secretary of state shall notify any corporation failing to file its annual report within three months after the date required under section 10-23-02 that its certificate of incorporation is not in good standing and that it may be dissolved pursuant to section 2 of this Act. Notice by the secretary of state shall be mailed to the corporation's last registered agent at the last registered office of record. If, however, the corporation files its annual report after the notice, together with the annual report filing fee as prescribed by section 10-23-04 and the late filing penalty fee as prescribed by section 10-23-02, its certificate of incorporation must be restored to good standing by the secretary of state.

SECTION 2. A new section to chapter 10-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Involuntary dissolution for failure to file annual report. A corporation that fails to file its annual report along with those statutory filing and penalty fees within one year after the date required by section 10-23-02, ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall note the dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation. Notice by

the secretary of state must be mailed to the corporation's last registered agent at the last registered office of record.

SECTION 3. AMENDMENT. If Senate Bill No. 2041 of the forty-ninth legislative assembly does not become effective, section 10-21-13.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-21-13.1. Failure to file annual report - Notice by secretary of state. The secretary of state shall notify any corporation failing to file its annual report within three months after the date required under section 10-23-02 that its certificate of incorporation may be terminated is not in good standing and that it may be dissolved pursuant to section 10-21-13.2. Notice by the secretary of state shall be mailed to the corporation's last registered agent at the last registered office of record. If, however, such the corporation shall file its annual report within three months after such the notice, together with a fee of twenty dollars; the annual report filing fee as prescribed by section 10-23-04 and the late filing penalty fee as prescribed by section 10-23-02, its certificate of incorporation shall be reinstated restored to good standing by the secretary of state. Such certificate of incorporation may be reinstated by the district court of the county where such corporation has its registered office, upon petition filed within one year after the date required by section 10-23-02 and upon condition that it file the annual report required together with a fee of thirty dollars.

SECTION 4. AMENDMENT. If Senate Bill No. 2041 of the forty-ninth legislative assembly does not become effective, section 10-21-13.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-21-13.2. Involuntary dissolution for failure to file annual report. A corporation which fails to file its annual report along with those statutory filing and penalty fees which are applicable, within one year after the date required by section 10-23-02, ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall note the termination dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of such the action to the dissolved corporation. Notice by the secretary of state shall be mailed to the corporation's last registered agent at the last registered office of record.

SECTION 5. AMENDMENT. Section 10-23-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-01. Annual report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by section sections 10-23-02 and 10-23-03, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
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 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.
3. A brief statement of the character of the business in which the corporation is actually engaged in this state.
4. The names and respective addresses of the directors and officers of the corporation.
5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
6. 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.
7. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in section 10-19-02. "Stated capital" means, at any particular time, the sum of the following:
 - a. The par value of all shares of the corporation having a par value, which have been issued.
 - b. The amount of the consideration received by the corporation for all shares of the corporation without par value, which have been issued, except such part of the consideration thereof as may have been allocated to capital surplus in a manner permitted by law.
 - c. Such amounts not included in subdivisions a and b as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation must be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23.

8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted shall be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December.
9. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such corporation.

Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which shall be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation. The secretary of state may destroy all the annual reports provided for in this section after they have been on file for six years.

SECTION 6. AMENDMENT. Section 10-23-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-02. Filing of annual report of domestic and foreign corporations - Penalty for late filing. The annual report for the preceding year of a domestic corporation shall be delivered to the secretary of state on or before the first day of August of each year, except that the first annual report of a domestic corporation shall be filed on or before the first day of August of the year next succeeding the calendar year in which its certificate of incorporation ~~or its certificate of authority, as the case may be,~~ was issued by the secretary of state. The annual

report for the preceding year of a foreign corporation shall be delivered to the secretary of state on or before the first day of April of each year, except that the first annual report of a foreign corporation shall be filed on or before the first day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to on or before the first day of August or April, as the case may be, such report was deposited in postmarked by the United States mail postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of section 10-23-01, he shall file the same the report shall be filed. If he finds that it the report does not so conform, he it shall promptly return the same be returned to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after such corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a corporation applies for an extension before the filing deadline, whenever in his discretion he considers such an extension of time advisable and proper written application for an extension is received before the filing deadline.

Each domestic corporation that fails or refuses to file its annual report for any year within the time prescribed by this section shall be subject to a penalty of twenty dollars if filed within ninety days after the due date, or fifty dollars if filed thereafter. A corporation which fails to file its annual report along with those statutory filing and penalty fees within one year after the date required by this section ceases to exist and is considered involuntarily dissolved by operation of law.

SECTION 7. AMENDMENT. Section 10-23-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-03. Penalties imposed upon corporations Filing of annual report of foreign corporations - Penalty for late filing.

The annual report for the preceding year of a foreign corporation shall be delivered to the secretary of state on or before the first day of April of each year, except that the first annual report of a foreign corporation shall be filed on or before the first day of April of the year next succeeding the calendar year in which its certificate of authority was issued by the secretary of state. Proof to the satisfaction of the secretary of state that on or before the first day of April such report was postmarked by the United States postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds

that such report conforms to the requirements of section 10-23-01, the report shall be filed. If the report does not so conform, it shall promptly be returned to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after such corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a written application for an extension is received before the filing deadline.

Each corporation, domestic or foreign, corporation that fails or refuses to file its annual report for any year within the time prescribed by this section 10-23-02 shall be subject to a penalty of ten percent of the license fee which would be payable if it were filing its articles of incorporation at the time such annual report was to have been filed twenty dollars.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by section 10-23-09 interrogatories propounded by the secretary of state, shall be deemed to be guilty of an infraction.

SECTION 8. AMENDMENT. Section 10-23-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-04. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, ~~twenty-five~~ thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, ~~twenty-five~~ twenty dollars.
3. Filing restated articles of incorporation, ~~twenty-five~~ thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~twenty-five~~ thirty dollars.
5. Filing an application to reserve a corporate name, ~~seven ten~~ ten dollars and ~~fifty~~ cents.
6. Filing a notice of transfer of a reserved corporate name, ~~seven ten~~ ten dollars and ~~fifty~~ cents.
7. Filing a statement of change of address of registered office or change of registered agent, or both, ~~seven ten~~ ten dollars and ~~fifty~~ cents.

8. Filing a statement of the establishment of a series of shares, fifteen dollars. Filing statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
9. Filing a statement of cancellation of shares, fifteen dollars. Filing a registered agent's consent to serve in such capacity, ten dollars.
10. Filing a statement of reduction of stated capital, fifteen dollars. Filing a resignation as registered agent, ten dollars.
11. Filing a statement of intent to dissolve, seven dollars and fifty cents. Filing a statement of the establishment of a series of shares, twenty dollars.
12. Filing a statement of revocation of voluntary dissolution proceedings, seven dollars and fifty cents. Filing a statement of cancellation of shares, twenty dollars.
13. Filing articles of dissolution, seven dollars and fifty cents. Filing a statement of reduction of stated capital, twenty dollars.
14. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, thirty-seven dollars and fifty cents. Filing a statement of intent to dissolve, ten dollars.
15. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, thirty-seven dollars and fifty cents. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
16. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, fifteen dollars. Filing articles of dissolution, twenty dollars.
17. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, fifteen dollars. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, forty dollars.
18. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, fifteen dollars. Filing an application of a foreign

corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.

19. Filing annual report of domestic corporation, ten dollars; of foreign corporation, twenty dollars; any other statement or report of either, four dollars. Filing a certificate of fact stating a merger of a foreign corporation holding a certificate of authority to transact business in this state, twenty dollars.
20. Filing statement of change of address of registered office by registered agent, seven dollars and fifty cents for each corporation affected by such change. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
21. Filing annual report of domestic corporation, twenty dollars; of foreign corporation, twenty dollars; any other statement or report of either, ten dollars.
22. Filing any process, notice, or demand for service, twenty dollars.
23. Filing articles of abandonment of merger, thirty dollars.
24. Filing a consent to use of name, ten dollars.

SECTION 9. AMENDMENT. Section 10-23-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-05. Miscellaneous charges. The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages, or fraction thereof, and five ten dollars for the certificate and affixing the seal thereto.
2. At the time of any service of process on him as resident agent of a corporation, ten dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SECTION 10. AMENDMENT. Section 10-23-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-06. License fees payable by domestic corporations - Exempting building and loan and savings and loan associations. The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation.
2. Filing articles of amendment increasing the number or value of authorized shares.
3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

The license fees shall be the sum of fifty dollars for the first fifty thousand dollars of its authorized shares, or fraction thereof, and the further sum of ten dollars for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.

The license fees payable on an increase in authorized shares shall be imposed only on the additional shares, but the amount of previously authorized shares shall be taken into account in determining the rate applicable to the additional authorized shares.

For the purposes of this section, shares without par value shall be considered worth ~~one dollar~~ ten cents per share.

The provisions of this section shall not apply to a building and loan or savings and loan association.

SECTION 11. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 4, 1985

CHAPTER 150

SENATE BILL NO. 2281
(Senators Lips, Satrom, Mushik)
(Representatives Martinson, Kelly)

VENTURE CAPITAL CORPORATIONS

AN ACT to provide for the creation of venture capital corporations and to provide for income tax credits; and to create and enact a new subsection to section 10-04-05 and a new subsection to section 10-04-06 of the North Dakota Century Code, relating to exempt securities and transactions.

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

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires, the term:

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; and
 - b. Is doing business within this state.
2. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax or a duty to file a tax return imposed by chapter 57-38.
3. "Venture capital corporation" means a corporation which is organized for the specific purposes and under the specific conditions provided for in sections 1 through 10 of this Act.

SECTION 2. Certification - Investment reporting by venture capital corporations. At the request of a venture capital corporation, the Bank of North Dakota shall certify whether a business meets the requirements of a qualified entity as defined in section 1 of this Act. The Bank of North Dakota shall establish the necessary forms and procedures for certifying qualified entities. Within fourteen days of making any investment, a venture capital corporation must give notice of the investment to the Bank of North Dakota. The notice must contain the name of the business in which the venture

capital corporation invested, the dollar amount of the investment, and the date on which the investment was made.

SECTION 3. Unqualified investment - Civil penalties enforcement. The Bank of North Dakota shall notify the attorney general of any investment made by a venture capital corporation in a business not certified as a qualified entity under section 2 of this Act. The attorney general shall assess a civil penalty for the investment and collect such civil penalty by a civil proceeding in any appropriate court. The civil penalty is twenty-five percent of the amount invested by the venture capital corporation in the business not certified as a qualified entity.

SECTION 4. Venture capital corporation - Incorporation.

1. To carry out the purposes of this Act, venture capital corporations may be formed under chapters 10-19 through 10-23. The articles of incorporation of a venture capital corporation must comply with subsections 2 through 9.
2. The purpose of a venture capital corporation must be solely to raise funds to be used to make investments in, and provide financing to qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide additional jobs within the state, and encourage research and development activities in the state.
3. Each director of a venture capital corporation must be a North Dakota resident, and must have a minimum investment in the venture capital corporation of one thousand dollars.
4. A venture capital corporation will provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation may establish and regulate terms and conditions, consistent with sections 1 through 10 of this Act, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than twenty percent of the stated capital of a venture capital corporation may be invested in any one qualified entity.
5. No business may be transacted or indebtedness incurred by the venture capital corporation, except such as is incidental to the venture capital corporation's organization or to obtaining subscriptions to or payment for its shares, until the venture capital corporation receives consideration for such shares equal to at least

- five hundred thousand dollars, which amount will be the initial stated capital of the venture capital corporation.
6. All consideration received from the sale of shares must be placed in an interest-bearing escrow account in the Bank of North Dakota, except that up to ten percent of the proceeds may be withheld for use in activities incidental to the venture capital corporation's organization or to obtaining subscriptions to or payment for its shares.
 7. If at any time within one year of the issuance of the certificate of incorporation of the venture capital corporation its stated capital equals at least five hundred thousand dollars, or such greater amount established by the articles of incorporation or bylaws of the venture capital corporation, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation for use and disposition according to its articles of incorporation and bylaws.
 8. If within one year of the issuance of the certificate of incorporation of the venture capital corporation its stated capital has not at any time equaled at least five hundred thousand dollars, or such greater amount established by the articles of incorporation or bylaws of the venture capital corporation, its certificate of incorporation will be terminated, the venture capital corporation must be dissolved, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to their investments.
 9. Prior to any investment in a venture capital corporation, the venture capital corporation must make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.

SECTION 5. Tax credit.

1. Subject to sections 6, 7, and 8 of this Act, 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. Tax credits under this Act are not subject to payment of interest as provided in section 57-38-35.1.
2. The state tax commissioner shall administer sections 5 through 10 of this Act. The state tax commissioner may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the administration of sections 5 through 10 of this Act.

SECTION 6. Amount of tax credit. Subject to sections 7 and 8 of this Act, the maximum amount of tax credit a taxpayer may receive is equal to twenty-five percent of the taxpayer's investment in any venture capital corporations, up to a total tax credit of two hundred fifty thousand dollars under sections 1 through 10 of this Act.

SECTION 7. Taxable year for credit.

1. The tax credit must be credited against the taxpayer's income tax liability for the taxable year in which full consideration for the investment in the venture capital corporation is received by the venture capital corporation. If the amount of the tax credit exceeds the taxpayer's tax liability for that taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward, to the extent not already used as a credit pursuant to this section, as a credit against the taxpayer's state income tax liability for the three taxable years preceding and the seven taxable years following the taxable year in which full consideration for the investment is received.
2. A taxpayer is eligible for a tax credit under sections 1 through 10 of this Act on the date the venture capital corporation receives full consideration for the investment purchased by the taxpayer in the venture capital corporation. In the event the venture capital corporation must return the taxpayer's investment pursuant to subsection 8 of section 4 of this Act, any tax credit taken by a taxpayer for the investment under this Act plus penalty and interest as provided in section 57-38-45 must be paid to the state tax commissioner; however, the taxpayer is entitled to retain a percentage of the tax credit equal to the percentage of the taxpayer's investment not returned by the venture capital corporation, up to a maximum percentage of ten percent.

SECTION 8. Tax credit limits. The total amount of investments for which tax credits are allowed for all taxpayers under this Act for the period beginning on the effective date of this Act and ending December 31, 1986, is four million dollars, and for each two-year period thereafter is four million dollars plus up to one million dollars of any investments available for tax credits from the previous two-year period. If investments in venture capital corporations reported to the state tax commissioner pursuant to section 10 of this Act exceed the limits on investments for tax credit imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in the venture capital corporations as determined from the forms provided for in section 10 of this Act.

SECTION 9. Tax credit - Procedure. To receive the tax credit provided by sections 1 through 10 of this Act, a taxpayer must claim

the tax credit on the taxpayer's annual state income tax return in the manner prescribed by the state tax commissioner and file with the taxpayer's annual state tax return a copy of the form issued by the venture capital corporation as to the taxpayer's investment in the venture capital corporation pursuant to section 10 of this Act. The tax credit provided for in this Act, including carrybacks and carryforwards, may not be claimed by taxpayers filing income tax returns pursuant to the provisions of section 57-38-30.3.

SECTION 10. Investment reporting forms. Within thirty days of the date on which an investment in a venture capital corporation is purchased the venture capital corporation shall file with the state tax commissioner and provide to the investor completed forms prescribed by the state tax commissioner which show as to each investment in the venture capital corporation the following:

1. The name, address, and identification number of the taxpayer who purchased the investment;
2. The dollar amount paid for the investment by the taxpayer; and
3. The date on which full consideration was received by the venture capital corporation for the investment.

SECTION 11. A new subsection to section 10-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Securities issued by a venture capital corporation organized under sections 1 through 10 of this Act.

SECTION 12. A new subsection to section 10-04-06 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The sale of capital stock of a venture capital corporation organized under sections 1 through 10 of this Act.

Approved March 29, 1985

COUNTIES

CHAPTER 151

HOUSE BILL NO. 1566
(Representative Lindgren)
(Senator Holmberg)

ELIMINATION OF COUNTY CONSTABLE OFFICE

AN ACT to amend and reenact sections 11-03-08, 11-08-06, 11-08-08, 11-08-13, 11-10-02, 11-10-06, 11-15-22, 11-15-28, 11-16-15, 11-19-04, 11-19-05, 11-19-13, 11-19.1-08, 11-28-10, 18-02-09, 19-01-13, 20.1-01-04, 20.1-02-14, 23-07.1-05, 23-15-04, 23-15-05, 27-07.1-16, 29-02-08, 29-05-23, 29-05-26, 32-22-29, 36-01-18, 40-20-06, 44-04-06, 44-08-09, 44-11-12, 53-03-06, 55-08-04.1, and 55-08-15 of the North Dakota Century Code, relating to the office of county constable; and to repeal sections 11-09-26 and 11-15-27 of the North Dakota Century Code, relating to county constables.

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

SECTION 1. AMENDMENT. Section 11-03-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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. ~~All~~ Any county judges and constables judge in office within the boundaries of a county organized under this chapter shall continue to hold ~~such offices office~~ in the new county during the remainder of ~~their terms the term~~ and shall give ~~bonds bond~~ to the new county in the same amount and in the same manner as ~~to the original county~~ as required by law.

SECTION 2. AMENDMENT. Section 11-08-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 following shall be 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, ~~except such~~ unless the office with its attendant powers and duties may be is combined with and conferred upon the county auditor by the board of county commissioners but no added compensation ~~shall~~ 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.
- 8- ~~Four constables-~~

SECTION 3. AMENDMENT. Section 11-08-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-08. When appointment of officers made - Qualification. The county officers ~~shall~~ must be appointed by the board of county commissioners at the following times in the year in which the county consolidated office form of government goes into effect:

1. On or before the fifteenth day of January, the sheriff, state's attorney, county superintendent of schools, and coroner, ~~and four constables shall~~ must be appointed, and such officers shall qualify within ten days thereafter.
2. Not less than ten days prior to April first, the county auditor ~~shall~~ must be appointed, and ~~he shall~~ the appointee qualify within ten days thereafter.
3. Not less than ten days prior to May first, the county treasurer ~~shall~~ must be appointed, and ~~he shall~~ the appointee shall qualify within ten days thereafter.

Thereafter, the appointments ~~shall~~ must be made within ten days prior to the expiration of the terms of office of ~~such~~ the officers. The failure of the board of county commissioners to make any appointment within the time prescribed ~~shall~~ does not impair its

power to make ~~such~~ the appointment subsequently for the remainder of the term of office of the officer so appointed.

SECTION 4. AMENDMENT. Section 11-08-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-13. Powers and duties of other officers. The sheriff, state's attorney, county superintendent of schools, and coroner, ~~and constables~~ appointed under the provisions of this chapter shall perform the duties and exercise the powers conferred by law upon ~~such officers respectively~~ them.

* SECTION 5. AMENDMENT. Section 11-10-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-02. Number and election of officers. Each organized county, unless it has adopted one of the optional forms of county government, provided by the code, shall have the following officers:

1. One county auditor.
2. One register of deeds.
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. One coroner.
9. One county superintendent of schools.
10. ~~Four constables-~~
11. ~~One public administrator-~~
12. 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 register of deeds ~~shall~~ must be ex officio clerk of the district court. In counties having a population of twenty-five thousand ~~inhabitants~~ or more, the county judge may appoint a clerk of county

* NOTE: Section 11-10-02 was also amended by section 1 of House Bill No. 1060, chapter 153.

court. In counties with a population of less than twenty-five thousand ~~inhabitants~~, the clerk of district court shall must be clerk of county court. The required officers shall 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 shall be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who shall be chosen in the manner prescribed in section 11-11-02, ~~the public administrator, who shall be chosen in the manner prescribed in section 11-21-01,~~ and the county coroner, who shall be chosen in the manner prescribed in section 11-19.1-03, ~~and the constables, who shall be appointed by the board of county commissioners.~~

SECTION 6. AMENDMENT. Section 11-10-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-06. Bonds of county officers. Before entering upon the duties of their respective offices, the following county officers ~~herein named shall~~ 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 ~~inhabitants~~, and in such counties, where the amount shall must be ten thousand dollars.
2. A county commissioner, two thousand dollars.
3. The county coroner, ~~or a county constable,~~ five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, ~~such~~ 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, ~~which amount shall be~~ of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand ~~inhabitants~~, and in such counties, 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 ~~shall~~ 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, ~~such~~ the population ~~shall~~ must be determined as provided in section 11-10-10.

SECTION 7. AMENDMENT. Section 11-15-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-22. Service of process on sheriff. In all actions or proceedings to which the sheriff is a party, by virtue of ~~his~~ office or otherwise, the coroner or ~~any constable~~ other peace officer of the county ~~of which such sheriff is an officer~~ may serve all necessary process on ~~such~~ the sheriff and make return thereon, and the return of the officer making ~~such~~ service ~~shall have~~ has the same credit as a sheriff's return. ~~Such~~ The officer shall receive the same fees as a sheriff receives for like services.

SECTION 8. AMENDMENT. Section 11-15-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-28. Sheriff ~~or constable~~ prohibited from collecting notes - Penalty. No sheriff, deputy sheriff, or employee in the sheriff's office; ~~or constable~~, while holding such office; or employment, ~~shall~~ may accept for collection, collect, or attempt to collect from any person, firm, or association within ~~his~~ the county for pay, profit, or remuneration any note, account, or claim of any nature or description except as required in the performance of the duties of ~~his~~ office. Any violation of the provisions of this section ~~shall constitute~~ constitutes an infraction.

SECTION 9. AMENDMENT. Section 11-16-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-16-15. Criminal act causing death - Felony - Inquiry - State's attorney may subpoena witnesses. If a state's attorney ~~shall~~ be notified by any officer or other person; or be cognizant himself is aware of any violation or criminal act causing a death; ~~or in any manner connected therewith~~; or have has reason to believe a felony has been committed, he the state's attorney may, prior to a crime being charged, inquire into the facts of ~~such~~ the violation or criminal act, and, with the consent and approval of the district judge of the county, for such purpose he the state's attorney may issue a subpoena for any person who he the state's attorney has reason to believe has any information or knowledge of ~~such~~ the violation, to appear ~~before him~~ at a time and place designated in such subpoena; ~~then and there~~ to testify concerning any ~~such~~ the violation. The subpoena ~~shall~~ must be directed to the sheriff ~~or~~

any constable of the county and shall must be served and returned to the state's attorney in the same manner as subpoenas are served and returned in criminal cases. Each witness shall must be sworn by the state's attorney to testify under oath, and to make true answer to all questions which may be propounded to him the witness by such the state's attorney touching any such the violation or criminal act. The testimony of every witness shall must be reduced to writing, and shall must become a part of the coroner's files in the case of a death and of the state's attorney's files in all other cases. For all purposes in this section the state's attorney may:

1. Administer oaths or affirmations to all witnesses.
2. Apply to the district court for the punishment of any witness for contempt for ~~or on account of~~ any disobedience of a subpoena, a refusal to be sworn, or to answer as a witness, or a refusal to sign ~~his~~ testimony of the witness.
3. Compel the attendance of witnesses by attachment in the manner and with the effect provided in title 27 under the North Dakota Rules of Criminal Procedure. Any witness compelled to testify under the provisions of this section shall be is entitled to counsel and all other constitutional rights.

SECTION 10. AMENDMENT. Section 11-19-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19-04. Peace officer to be summoned - Warrant issued to summon jurors. When the coroner has notice that the dead body of a person supposed to have died by unlawful means has been found in his the county, he the coroner shall summon the sheriff, a police officer, or the state's attorney to accompany him the coroner, and shall issue his a warrant to the sheriff, ~~or to a constable of his county,~~ requiring him the sheriff to summon forthwith three electors who have the qualifications of jurors of the county to appear before the coroner at the time and place named in the warrant.

SECTION 11. AMENDMENT. Section 11-19-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19-05. Form of warrant to summon coroner's jury. The warrant to summon a coroner's jury shall be in substantially the following form:

State of North Dakota,

ss.

County of -----

To the sheriff ~~or any constable~~ of said county:

You are hereby required to summon forthwith three electors, having the qualifications of jurors of your county, to appear before me at (name the place) at (name the day and hour or say forthwith), then and there to hold an inquest on the dead body

of ----- there lying and find by what means he
that person died.

Witness my hand this ----- day of -----, 19-----.

 Coroner.

SECTION 12. AMENDMENT. Section 11-19-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 his that person's arrest by an officer or by any other person present, and then he shall must make a warrant requiring the officer or other person to take him that person before a county judge. If the person charged is not present and the coroner believes he that person can be arrested, the coroner may issue a warrant to the sheriff and constables of the county requiring them the sheriff to arrest the person and take him that person before a county judge.

SECTION 13. AMENDMENT. Section 11-19.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19.1-08. Records of coroner's office. It ~~shall be~~ is the duty of the coroner to keep a full and complete record and to fill in the cause of death upon the death certificate in all cases coming under ~~his the coroner's~~ jurisdiction. All records ~~shall must~~ be kept in the office of the coroner, if the coroner maintains an office as coroner, and if ~~no such office is so maintained the coroner maintains no separate office,~~ then in the office of the clerk of the district court of the county, and ~~shall must~~ be properly indexed, stating the name, if known, of every deceased person, the place where the body was found, date of death, cause of death, and all other available information required by this chapter. The report of the coroner, and the detailed findings of the autopsy, if one was performed, ~~shall must~~ be attached to the report of every case. The coroner shall promptly deliver or cause to be delivered to the state's attorney of the county in which ~~such~~ a death occurred, copies of all necessary records relating to every death in which, ~~in the judgment of~~ the coroner or state's attorney, determines further investigation may be deemed advisable. The sheriff of the county, the police of the city, or the state highway patrolmen on duty in that county, ~~or the constable of the township~~ in which the death occurred, may be requested to furnish more information or make further investigation when requested by the coroner or his the coroner's deputy. The state's attorney may obtain from the office of the coroner, copies of records and such other information as he may deem necessary for further investigation. All records of ~~said office of~~ the coroner shall become and remain the property of the county, and ~~shall be considered~~ are public records.

SECTION 14. AMENDMENT. Section 11-28-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28-10. Police, ~~constables,~~ and ~~sheriff to enforce chapter.~~ It ~~shall be~~ is the duty of all police ~~and constables and,~~ the sheriff, and other peace officers to enforce ~~the provisions of~~ this chapter and of the rules ~~and regulations of~~ the board of county park commissioners within their respective jurisdictions.

SECTION 15. AMENDMENT. Section 18-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-02-09. Powers of rangers, wardens, and deputies.

1. Forest rangers, fire wardens, emergency fire wardens, and other duly appointed deputies shall take prompt action against the spread and illegal setting of forest fires. They ~~shall~~ have the power of sheriffs to arrest, without warrant, for violations of the statutes relating to ~~such~~ forest fires. They may execute and serve all warrants and processes issued by any ~~county or municipal judge, or by~~ any court having jurisdiction in the same manner as any ~~constable~~ peace officer may serve and execute ~~such those~~ processes, and ~~to~~ arrest any person detected in the actual violation, or whom ~~such the~~ officer has reasonable cause to believe guilty of a violation of any of the provisions of the statutes relating to forest fires, and ~~to~~ take ~~such~~ the person before any court in the county where the offense was committed and make proper complaint.
2. They ~~shall~~ have the authority to call upon any able-bodied citizen to assist in fighting ~~such forest~~ forest fires in ~~such~~ any manner as they may direct.
3. All ~~such~~ forest rangers, fire wardens, emergency fire wardens, and other duly appointed deputies may in the performance of their official duty go on the lands of any person or corporation to fight forest fires, and in doing so may set backfires, dig trenches, cut and plow firelines, or carry on all other activities customary in the fighting of forest fires, without incurring liability to anyone.

SECTION 16. AMENDMENT. Section 19-01-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-13. Department may seize unlawful products, articles, compositions, or things without search warrant. The department may seize any product, article, composition, or thing which is manufactured, sold, used, transported, kept, or offered for sale, use, or transportation, or which is held in possession with intent to use, sell, or transport the same, in violation of any provision of this title applicable to such product, article, composition, or thing, or in violation of any rule, regulation, standard, or definition relating to ~~such the~~ such the

product, article, composition, or thing established pursuant to any provision of this title. The director, assistant director, inspector, agents, or employees of the department, shall have the powers of a constable peace officer. Such a seizure may be made without warrant, but in such case, as soon as practicable, the person suspected of violation shall must be arrested and prosecuted therefor for the violation.

SECTION 17. AMENDMENT. Section 20.1-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-04. Attorney general, state's attorneys, sheriffs, constables, and peace officers to enforce game and fish laws. The attorney general, and all state's attorneys, sheriffs, constables, 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 in all civil actions in which the commissioner or any of the game wardens may be interested officially, and shall appear in the prosecution of criminal actions arising under this title.

SECTION 18. AMENDMENT. Section 20.1-02-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-14. Writs served and executed by game wardens - Peace officers and others to aid wardens, when. The commissioner, deputy commissioner, and all wardens and deputy wardens may serve and execute, in the same manner as any sheriff or constable, all warrants and legal process issued by a court in enforcing this title. Such The officers of the department may call to their aid any sheriff, deputy sheriff, constable, police officer, or other person to enforce this title. All such peace officers or other persons, when called upon therefor, shall enforce and aid in enforcing this title.

SECTION 19. AMENDMENT. Section 23-07.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.1-05. Reports - Temporary orders for the custody of persons. Upon a report to or receipt of information by the state health officer or any physician in the state that any person is afflicted with tuberculosis and as a source of infection endangers other persons, a report shall must be made to the state health officer. Upon the receipt of such information by the report, the state health officer, an investigation shall be made investigate the matter and if the state health officer is convinced that an active case of infectious tuberculosis in a communicable and contagious stage which endangers other persons exists, the state health officer shall request such the person to voluntarily seek appropriate care and treatment. If the person refuses to accept voluntary care and treatment, the state health officer, under the guidelines of the state health council, is authorized to may issue a temporary order

for care and treatment as ~~is~~ determined by the state health officer. If the state health officer's temporary order is ignored, the state health officer may issue an order directing the sheriff or any ~~constable peace officer~~ of the county where the alleged tubercular person resides to compel the attendance of the alleged tubercular person and may provide for suitable housing and care of the person until a hearing is held pursuant to section 23-07.1-08.

Prior to issuing a temporary order pursuant to under this section, the state health officer or his a designee, under the guidelines of the state health council, shall hear all relevant testimony for or against the temporary order and the. The examination and hearing on the order shall must be in the presence of the alleged tubercular person. The alleged tubercular person and any relative may resist the order and the parties may be represented by counsel.

SECTION 20. AMENDMENT. Section 23-15-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-15-04. Exceptions. Nothing in this chapter shall be construed to prohibit prohibits the following:

1. Any licensed wholesaler, dealer, or jobber from selling at wholesale such fireworks as which are not herein prohibited.
2. The sale of any kind of fireworks for shipment directly out of the state.
3. The use of fireworks by airplanes, railroads, or other transportation agencies for signal purposes or illumination.
4. The sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

Application for a license as distributor shall must be made to the state fire marshal on forms prescribed by him the state fire marshal. Application for a license as a retailer shall must be made to the county sheriff on forms prescribed by the state fire marshal. Each application shall must be accompanied by the required fee, which shall be two hundred and fifty dollars for a distributor's license and five dollars for a retailer's license. Fees for distributors' licenses shall must be deposited in the general fund in the state treasury and fees for retailers' licenses shall must be deposited in the county general fund. The license shall be good is valid only for the calendar year in which issued and shall must at all times be displayed at the place of business of the holder thereof licensee. Such distributors' and retailers' The licenses shall be are in addition to any other license required by law or municipal ordinance. Provided, however, that the The licensing provisions of this section shall do not, however, apply to a

retailer who is required to become licensed by any municipality ~~and any.~~ Any license fee levied by ~~such~~ a municipality ~~shall~~ must be deposited in the municipality's general fund.

It ~~shall~~ is unlawful for any person not licensed as a wholesaler or retailer to bring any fireworks into this state, and it ~~shall~~ is unlawful for any retailer in this state to sell any fireworks which have not been purchased from a wholesaler licensed under ~~the provisions of~~ this chapter. Any persons licensed under ~~the provisions of~~ this chapter ~~shall~~ must keep available for inspection by the state fire marshal or any sheriff, police officer, ~~constable~~ or local fire marshal a copy of each invoice for fireworks purchased as long as any fireworks included on ~~such~~ the invoice are held in ~~his~~ the licensee's possession, which invoice ~~shall~~ must show the license number of the wholesaler from whom the purchase was made.

SECTION 21. AMENDMENT. Section 23-15-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-15-05. State fire marshal or sheriff to seize all fireworks or combustibles. The state fire marshal or any sheriff, police officer, ~~constable~~, or local fire marshal shall seize, take, remove, or cause to be removed at the expense of the owner all fireworks or combustibles offered or exposed for sale, stored, or held for use in violation of this chapter.

SECTION 22. AMENDMENT. Section 27-07.1-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-16. Bailiffs of county courts - Appointment, terms, powers, compensation. The judge of a county court may appoint one or more competent persons as bailiffs of the court. ~~Such~~ The bailiffs ~~shall~~ hold office at the pleasure of the judge, ~~shall~~ have the same powers as a ~~constable~~ peace officer, and ~~shall~~ are entitled to receive for their services an amount which ~~shall equal~~ equals the compensation and mileage which is provided for jurors for required attendance at sessions of the district or county court under the provisions of section 27-09.1-14.

SECTION 23. AMENDMENT. Section 29-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-02-08. Magistrate must issue warrant. If it appears from a complaint to a magistrate that there is just reason to fear the commission of an offense threatened by the person complained of, the magistrate must issue a warrant directed generally to the sheriff of the county, ~~or any constable~~, marshal, or policeman of the city, reciting the substance of the complaint and commanding the officer forthwith to arrest the person complained of and to bring ~~him~~ that person before ~~such~~ the magistrate.

SECTION 24. AMENDMENT. Section 29-05-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-05-23. Warrant transmitted by telegraph. Whenever a warrant for the arrest of a person accused of a crime or public offense is issued by a magistrate, the delivery of such the warrant by telegraph may be authorized by a judge of the supreme or district court by an endorsement authorizing such telegraphic delivery, at any place within this state, upon the warrant of arrest under the hand of such the judge, directed generally to any sheriff, constable, marshal, or policeman peace officer in the state. After such endorsement, a telegraphic copy of such the warrant may be sent by telegraph to one or more of such officers any peace officer within the state, and such the copy is as effectual in the hands of any such peace officer, and he who must serve the same and in all regards proceed thereunder, as though he the peace officer held an original warrant issued by the magistrate making the endorsement thereon.

SECTION 25. AMENDMENT. Section 29-05-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-05-26. Arrest directed by telegraph. In all cases in which by law a peace officer of this state may arrest a person without a warrant, or having a warrant for the arrest of a person accused of a crime or public offense and such when the person otherwise may escape from this state, such the peace officer may direct any sheriff, constable, marshal, or policeman other peace officer in this state, by telegraph, to arrest such the person and designate the accused in said order, who must be designated by name or description or both.

SECTION 26. AMENDMENT. Section 32-22-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-22-29. Person restrained in danger of being taken out of jurisdiction - Warrant. When it appears to any court authorized by law to issue the writ of habeas corpus that anyone is illegally held in custody, confinement, or restraint, and that there is reason to believe that such the person will be carried out of the jurisdiction of the court before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such the court may cause a warrant to be issued reciting the facts and directed to the sheriff, or coroner, or a constable of the county, commanding such the officer to take such the person thus held in custody, confinement, or restraint, and forthwith bring him that person before such the court to be dealt with according to law. The court also may insert in such the warrant a command for the arrest of the person charged with such the illegal detention and restraint.

SECTION 27. AMENDMENT. Section 36-01-18 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-18. Inspection of livestock in transit - Execution of orders of board by peace officers - Powers of officers - Penalty. Authorized representatives of the state livestock sanitary board, 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 such representative to stop, the operator of any vehicle shall stop the same and cause to be shown vehicle, show any health or identification forms which are required to be carried in transportation of livestock, and to permit such 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 constitutes a class A misdemeanor. Any vehicle used for such purposes shall by an inspector for purposes of inspecting livestock in transit must be clearly identified in letters not smaller than three inches [7.62 centimeters] and. The inspector is authorized to use a stop signal.

The state livestock sanitary board may call any sheriff, or deputy sheriff, or constable to execute its orders, and such those officers shall must obey the orders of said the board. Any peace officer may arrest and take before any county judge of the county any person found violating any of the provisions of this chapter, and such officers. The peace officer shall notify the state's attorney immediately of such the arrest, and the state's attorney shall prosecute the person so offending.

SECTION 28. AMENDMENT. Section 40-20-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-20-06. Arrest by chief of police or policeman outside of city - Fees. No chief of police or policeman shall receive any fee for going outside of the city to make an arrest for violation of a state law unless the board of county commissioners is satisfied that a delay in obtaining the sheriff, his or a sheriff's deputy, or a constable to make the arrest would have permitted an escape.

SECTION 29. AMENDMENT. Section 44-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-04-06. Peace officers to report law violations. The state's attorney, assistant state's attorney, sheriff, deputy sheriff, constable, or peace officer of any county, township, or city in this state, having any evidence, knowledge, or notice of any violation of any liquor, gambling, cigarette, snuff, pool hall, bawdyhouse, prostitution, white slave, or habit forming drug laws of North Dakota shall investigate the same and shall seek evidence of such the violation, and the names of witnesses by whom such the violation may be proved, and in the case of any. Any peace officer shall report the same information to the state's attorney of the county in which such the violation occurs and shall give him assistance assist the state's attorney in the prosecution of the violators of said laws.

SECTION 30. AMENDMENT. Section 44-08-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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, ~~constable~~, 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 the ~~rendition of such~~ service, or to give security for the ~~same costs of service~~, to be approved by the officer.

SECTION 31. AMENDMENT. Section 44-11-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-11-12. Powers of commissioner - Subpoenas - Service - Fees. ~~Upon having taken and filed such~~ After taking and filing the oath of office, the commissioner ~~shall have~~ has authority to issue subpoenas for persons and subpoenas duces tecum; and to administer oaths to witnesses the same as ~~now~~ is conferred upon county judges. ~~Such~~ The subpoenas may be directed to any sheriff, ~~constable~~, or chief of police, who immediately shall serve the ~~same~~ subpoenas. ~~Such~~ The officer ~~shall be~~ is entitled, ~~for his services in serving the same,~~ to such fees as ~~now~~ are allowed to ~~constables~~ sheriffs for serving subpoenas in county court. ~~Such~~ The fees ~~shall~~ must be paid in the same manner as is provided in this chapter for witness fees and commissioner's fees. The procedure in taking the testimony ~~shall be the same as is provided by law in the district court as to admissibility of testimony.~~ ~~Such~~ The commissioner, upon taking and filing his oath, shall have ~~has~~ the same powers as ~~now~~ are conferred upon district judges to take testimony and shall rule on, admit, or exclude testimony accordingly. He ~~shall~~ have the power to ~~The~~ commissioner may punish for contempt in the same manner as is provided by law ~~for contempt~~ in the district court.

SECTION 32. AMENDMENT. Section 53-03-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-03-06. Board to enforce provisions - Free access of officers. The ~~said~~ governing body or fair board shall enforce the provisions of the carnival contract ~~and~~ of this chapter, and of any ordinances of the municipality regulating carnivals. Each permit ~~shall~~ must contain a provision that sheriffs, ~~constables~~, and police officers shall have free access to the grounds and all booths, shows, and concessions thereon at all times, and all officers present at such carnival shall enforce all the provisions of this chapter and other governing statutes of this state.

SECTION 33. AMENDMENT. Section 55-08-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-04.1. Writs served and executed by department peace officers - Others to aid department peace officers - When. The director and all other

department peace officers may serve and execute, in the same manner as any sheriff ~~or constable~~, all warrants and legal process issued by the court in enforcing this chapter. ~~Such~~ The officers of the department may call to their aid any sheriff, deputy sheriff, ~~constable~~, police officer, or other person to enforce this chapter. All ~~such~~ peace officers or other persons, when called upon ~~thereof~~, shall enforce and aid in enforcing this chapter.

SECTION 34. AMENDMENT. Section 55-08-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-15. Attorney general, state's attorneys, sheriffs, ~~constables~~, and peace officers to enforce park and recreation laws. The attorney general, and all state's attorneys, sheriffs, ~~constables~~, and other peace officers shall enforce this chapter.

SECTION 35. REPEAL. Sections 11-09-26 and 11-15-27 of the North Dakota Century Code are hereby repealed.

Approved March 14, 1985

CHAPTER 152

HOUSE BILL NO. 1083
(Legislative Council)
(Interim Political Subdivisions "B" Committee)

COUNTY HOME RULE

AN ACT to provide for the establishment and operation of home rule in counties; and to amend and reenact sections 12.1-01-05 and 57-01-02.1 of the North Dakota Century Code, to provide that home rule counties' charters or ordinances may not supersede state laws defining crimes and to allow home rule counties to enter sales tax collection agreements with the tax commissioner.

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

SECTION 1. Methods of proposing home rule charter. The board of county commissioners may on its own motion cause a home rule charter to be drafted and submitted for adoption to the electors of the county in the manner provided in this Act. A home rule proposal may be initiated in a petition filed with the board of county commissioners and signed by qualified electors of the county not fewer in number than two percent of the population of the county.

SECTION 2. Charter commission - Membership - Preparation and submission of charter - Compensation and expenses - Publication. Within sixty days after proceedings have been initiated for a home rule charter, the board of county commissioners shall appoint a five-member charter commission to draft the charter. The board shall designate one of the charter commission members as chairman of the charter commission. The board shall set the compensation and expenses of charter commission members. The board, from its general funds, may furnish the charter commission with office space, clerical help, supplies, and legal and other assistance. The charter commission shall hold at least one public hearing on the proposed charter and shall prepare and submit the charter to the board of county commissioners within one year after appointment. The charter must contain a list of county offices to be elected and any elected offices that will be eliminated or combined if the charter is adopted. The board of county commissioners shall publish the proposed charter once in the official newspaper of the county.

SECTION 3. 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.

SECTION 4. 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 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.

SECTION 5. Powers. After the filing with the secretary of state of a charter approved in reasonable conformity with this chapter, the county and its citizens may, if included in the charter and implemented through ordinances:

1. Acquire, hold, operate, and dispose of property within or without the county limits, and exercise the right of eminent domain for those purposes.
2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law, and establish debt and mill levy limitations; provided, that all property in order to be subject to the assessment provisions of this subsection must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law which determines what property or acts are subject to, or exempt from, ad valorem or sales and use taxes.

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.
4. Provide for all matters pertaining to county elections, except as to qualifications of electors.
5. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and penalties for violation of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare. However, this subsection does not confer any authority to regulate any industry or activity which is regulated by state law or by rules adopted by a state agency.
6. Lay out or vacate public grounds, and provide through its governing body for the construction, use, operation, designation, and regulation of a county road system.
7. Provide for zoning, planning, and subdivision of public or private property within the county limits but outside the zoning authority of any city or organized township.
8. Exercise in the conduct of its affairs all powers usually exercised by a corporation.
9. Contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

The people of all counties coming within this chapter have the full right of self-government in all matters within the powers enumerated in this chapter. The statutes of this state, so far as applicable, continue to apply to counties, except as superseded by the charters of the counties or by ordinances passed pursuant to the charters.

SECTION 6. Amendment or repeal. The home rule charter adopted by any county may be amended or repealed by a proposal by the governing body of the county or by petition of the number of electors provided in section 1 of this Act, submitted to and ratified by the qualified electors of the county. A petition to amend or repeal a home rule charter must be submitted to the governing body of the county. Within thirty days of receipt of a

valid petition or approval of a proposal to amend or repeal a home rule charter, the governing body of the county shall publish any proposed amendment or repeal of a home rule charter once in the official newspaper of the county. At least sixty days after publication, the proposed amendment or repeal must be submitted to a vote of the qualified electors of the county at the next primary or general election. The electors may accept or reject any amendment or a repeal by a majority vote of electors voting at the election.

SECTION 7. Commission - Terms of office - Vacancies. The board of county commissioners shall determine the term of office of the members of the charter commission at the time the members are appointed. The board of county commissioners shall fill any vacancy on the charter commission.

SECTION 8. Restriction on proposals to amend or repeal. Any proposal to amend or repeal a home rule charter may not be submitted to the electorate more often than every two years.

SECTION 9. Manner of calling and holding elections. The elections provided for in this chapter are subject to the laws applicable to other elections of the county. All qualified electors of the county are eligible to vote at the election. The charter commission, for proposals to adopt a home rule charter, or the governing body of the county, for proposals to amend or repeal a home rule charter, shall prescribe the form of ballot so that the voter may signify whether the voter is for or against the proposed home rule charter or the amendment or repeal.

SECTION 10. Effect of amendment or repeal on salary or term of office. On the first day of January following repeal of a home rule charter the county reverts to the form of government of the county immediately preceding adoption of the home rule charter. If positions to which officials were elected under the home rule charter are substantially the same as positions under the form of government to which the county reverts upon repeal, the elected officials shall continue to exercise the authority of their positions for the salary prescribed by the home rule charter until expiration of their terms of office as prescribed by the home rule charter. No amendment of a home rule charter may shorten the term for which any official was elected or reduce the salary of the official's office for that term.

SECTION 11. General powers preserved. All powers granted counties by general law are powers of home rule counties.

SECTION 12. Vested property - Rights of action - Actions saved. The adoption of any charter or amendment does not destroy any property, action, right of action, claim, or demand of any nature vested in the county. All rights of action, claims, or demands are preserved to the county and to any persons asserting any claims against the county as completely as though the charter or amendment had not been adopted. The adoption of any charter or amendment affects neither the right of the county to collect special

assessments previously levied under any law or charter for the purpose of public improvements, nor impairs the obligation of any existing contract to which the county is a party.

SECTION 13. AMENDMENT. Section 12.1-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-01-05. Crimes defined by state law shall not be superseded by city or county ordinance or by home rule city's or county's charter or ordinance. No offense defined in this title or elsewhere by law shall be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or counties. This section shall not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

*** SECTION 14. AMENDMENT.** Section 57-01-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-01-02.1. Tax collection agreements with home rule cities or counties.

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1, or of any county which has adopted the home rule provisions of sections 1 through 12 of this Act, and the tax commissioner are hereby authorized and empowered to enter into contractual agreements whereby the tax commissioner shall have authority to collect any sales and or use taxes assessed by such incorporated city or county.
2. It shall be the duty of the tax commissioner to deposit with the state treasurer all money collected by him under this section and to accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, quarterly, shall pay to the ~~city~~ auditors of the several cities or counties the money to which they are entitled under this section.
3. The agreements entered into under this section may also provide for an agreed amount to be allowed the tax commissioner for services rendered in connection with such collections. Any sums collected for services rendered shall be paid to the state treasurer for deposit in the general fund.

Approved March 31, 1985

* NOTE: Section 57-01-02.1 was also amended by section 1 of House Bill No. 1657, chapter 598.

CHAPTER 153

HOUSE BILL NO. 1060
(Legislative Council)
(Interim Elections Committee)

COUNTY PUBLIC ADMINISTRATOR APPOINTMENT

AN ACT to amend and reenact sections 11-10-02, 11-21-01, and 11-21-04 of the North Dakota Century Code, relating to the office of public administrator.

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

* SECTION 1. AMENDMENT. Section 11-10-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-02. Number and election of officers. Each organized county, unless it has adopted one of the optional forms of county government, provided by the code, shall have the following officers:

1. One county auditor.
2. One register of deeds.
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. One coroner.
9. One county superintendent of schools.
10. Four constables.

* NOTE: Section 11-10-02 was also amended by section 5 of House Bill No. 1566, chapter 151.

11. ~~One public administrator.~~

- 12- 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 register of deeds shall be ex officio clerk of the district court. In counties having a population of twenty-five thousand inhabitants or more, the county judge may appoint a clerk of county court. In counties with a population of less than twenty-five thousand inhabitants, the clerk of district court shall be clerk of county court. The required officers shall 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 shall be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who shall be chosen in the manner prescribed in section 11-11-02, ~~the public administrator, who shall be chosen in the manner prescribed in section 11-21-01,~~ the county coroner, who shall be chosen in the manner prescribed in section 11-19.1-03, and the constables, who shall be appointed by the board of county commissioners.

SECTION 2. AMENDMENT. Section 11-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-01. Public administrator - Appointment - Term of office of public administrator - When elected. Every county shall elect a public administrator in each year in which a national presidential election is held. The county judge may appoint a public administrator for the county. 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 his office for four years and until his a successor is elected or appointed and qualified.

SECTION 3. AMENDMENT. Section 11-21-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-04. Filing of bond, and oath, certificate of election. The public administrator shall file his oath, certificate of election, and bond with the judge of the county court. The bond, and oath, and certificate shall be recorded at length in the record books of the court.

Approved February 4, 1985

CHAPTER 154

HOUSE BILL NO. 1247
(Conmy)

COUNTY OFFICERS' SALARIES

AN ACT to amend and reenact subsections 2 and 5 of section 11-10-10 of the North Dakota Century Code, relating to the salaries of county officers.

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

* SECTION 1. AMENDMENT. Subsections 2 and 5 of section 11-10-10 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The county treasurer, county superintendent of schools, register of deeds, county auditor, clerk of district court, and state's attorney each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. ~~Thirteen~~ Fifteen thousand one hundred dollars in counties having a population of less than eight thousand.
 - b. ~~Thirteen~~ Fifteen thousand five hundred ~~twenty~~ 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.
 - c. 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

* NOTE: Section 11-10-10 was also amended by section 1 of House Bill No. 1447, chapter 155, and amended by section 1 of Senate Bill No. 2364, chapter 156.

party except the state or county, shall receive a salary of twenty-two thousand dollars to twenty-nine thousand seven hundred dollars, to be determined by resolution of the board of county commissioners.

5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, which salary or per diem shall not exceed the following limits: in counties having a population of eight thousand or less, four thousand five hundred forty-five dollars; in counties having a population of over eight thousand and less than fifteen thousand, five thousand three hundred thirty dollars; and in counties having a population of over fifteen thousand, six thousand three hundred sixty dollars. For the purpose of fixing the maximums herein provided, population figures shall be those established by the most recent federal census with a maximum of seven thousand five hundred dollars. In addition, there shall 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 shall be at the same rate as provided by section 11-10-15, and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" shall 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 shall be paid in monthly installments.

Approved March 27, 1985

CHAPTER 155

HOUSE BILL NO. 1447
(Representative Rydell)
(Senator Olson)

SHERIFFS' SALARIES

AN ACT to amend and reenact subsection 6 of section 11-10-10 of the North Dakota Century Code, relating to salaries of county sheriffs.

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

* SECTION 1. AMENDMENT. Subsection 6 of section 11-10-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:
 - a. ~~Fifteen~~ Seventeen thousand ~~five~~ nine hundred dollars in counties having a population with less than eight thousand.
 - b. ~~Sixteen~~ Eighteen thousand ~~five~~ 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.

Approved March 22, 1985

* NOTE: Section 11-10-10 was also amended by section 1 of House Bill No. 1247, chapter 154, and amended by section 1 of Senate Bill No. 2364, chapter 156.

CHAPTER 156

SENATE BILL NO. 2364
(Naaden, Stenehjem)

STATE'S ATTORNEYS' SALARIES

AN ACT to amend and reenact section 11-10-10 of the North Dakota Century Code, relating to the salary of state's attorneys.

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

* SECTION 1. AMENDMENT. Section 11-10-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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, ~~state's attorney~~, clerk of district court, and sheriff shall 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, shall 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, ~~and state's attorney~~ each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Thirteen thousand one hundred dollars in counties having a population of less than eight thousand.

* NOTE: Section 11-10-10 was also amended by section 1 of House Bill No. 1247, chapter 154, and amended by section 1 of House Bill No. 1447, chapter 155.

- b. Thirteen thousand five hundred twenty 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.
- e- 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 a salary of twenty-two thousand dollars to twenty-nine thousand seven hundred dollars, to be determined by resolution of the board of county commissioners.
3. Repealed by S.L. 1975, ch. 87, § 2.
4. The salaries of the judges of county courts shall 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 shall 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, which salary or per diem shall not exceed the following limits: In counties having a population of eight thousand or less, four thousand five hundred forty-five dollars; in counties having a population of over eight thousand and less than fifteen thousand, five thousand three hundred thirty dollars; and in counties having a population of over fifteen thousand, six thousand three hundred sixty dollars. For the purpose of fixing the maximums herein

provided, population figures shall be those established by the most recent federal census. In addition, there shall 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 shall be at the same rate as provided by section 11-10-15, and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" shall 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 shall be paid in monthly installments.

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Fifteen thousand five hundred dollars in counties having a population with less than eight thousand.
 - b. Sixteen thousand five 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, 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. 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.

Approved March 31, 1985

CHAPTER 157

HOUSE BILL NO. 1260
(Representatives O'Connell, Martin, Smette)
(Senators Christensen, Wogsland)

MILEAGE EXPENSES OF COUNTY EMPLOYEES

AN ACT to amend and reenact sections 11-10-15, 11-10-16, and 11-15-12 of the North Dakota Century Code, relating to mileage expenses paid to county officials and employees.

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

SECTION 1. AMENDMENT. Section 11-10-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-15. Mileage of officials and employees. Unless otherwise provided by the laws of this state, every county official, whether elective or appointive, and every deputy of a county official, and any county employee entitled by law to travel or mileage expense, shall be allowed or paid the same amounts is entitled to mileage expenses of at least the amount allowed state officers and employees under section 54-06-09 for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duties.

SECTION 2. AMENDMENT. Section 11-10-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-16. Official must file statement Statement to claim mileage. Before an allowance for mileage or travel expense may be paid by a county, the county official or his deputy person for whose travel the same is claimed claim is made shall file with the county auditor an itemized statement verified by his affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. The statement and affidavit shall be submitted to the board of county commissioners and the claim shall be approved by the board before it shall be Before a claim for mileage is allowed or paid the claimant shall file the statement and affidavit with the board of county commissioners which shall decide whether to allow the claim.

SECTION 3. AMENDMENT. Section 11-15-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-12. Sheriff's mileage. A sheriff or his deputy, for each mile [1.61 kilometers] actually and necessarily traveled within this state in the performance of official duties, shall be allowed and paid only the following amounts:-

- 1- The sum of twenty cents minimum per mile {1.61 kilometers} when travel is by motor vehicle.
- 2- When travel is by rail or other common carrier the amounts actually and necessarily expended therefor.

When such travel is outside the state in the performance of official duties, whether by motor vehicle or by rail or other common carrier, such officer shall be allowed and paid not less than fifteen cents per mile {1.61 kilometers} when such travel is by motor vehicle, including travel on extradition, and if by rail or other common carrier his actual and necessary travel expenses is entitled to reimbursement for mileage expenses in accordance with section 11-10-15.

Approved March 14, 1985

CHAPTER 158

SENATE BILL NO. 2372
(Senators Nelson, Dotzenrod)
(Representatives Vander Vorst, L. Hanson)

WATER MAIN RIGHT OF WAY

AN ACT to amend and reenact subsection 13 of section 11-11-14 and subsection 10 of section 58-06-01 of the North Dakota Century Code, relating to the authority of boards of county commissioners and boards of township supervisors to grant rights of way for water or wastewater systems; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 13 of section 11-11-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. To grant to any person the right of way for the erection of telephone lines, electric light systems, water or wastewater systems, or gas or oil pipeline systems over, under, or upon public grounds, county streets, roads, or highways.

SECTION 2. AMENDMENT. Subsection 10 of section 58-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. To grant to any person the right of way for the erection of telephone lines, electric light systems, water or wastewater systems, or gas or oil pipeline systems over, under, or upon public grounds, streets, alleys, or highways.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 159

SENATE BILL NO. 2310
(Stenehjem, Holmberg, Ingstad)

COUNTY LAND PURCHASE

AN ACT to amend and reenact section 11-11-19 of the North Dakota Century Code, relating to authority of county commissioners to purchase land without an election.

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

SECTION 1. AMENDMENT. Section 11-11-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-19. When commissioners may purchase land without election. If, in the opinion of a majority of the members of the board of county commissioners, ~~the acquisition of land adjoining the courthouse is, or may become, necessary for the enlargement of the courthouse or the jail, or for the purpose of beautifying county buildings, or to prevent the erection of other buildings so near to the courthouse and jail that the transaction of public business will be inconvenienced,~~ the board, by a majority vote of its members, may purchase such land without submitting the question to a vote of the electors of the county. The money required for the purchase of the additional land shall be raised in the manner in which money is raised for general county purposes.

Approved March 22, 1985

CHAPTER 160

HOUSE BILL NO. 1618
(Sauter, Tollefson)

COUNTY SPOUSE ABUSE PROGRAMS

AN ACT to provide for county spouse abuse programs; and to declare an emergency.

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

SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Spouse abuse programs - Expenditure of funds. The board of county commissioners may establish or maintain spouse abuse programs. For the purposes of this section, a spouse abuse program is a program that provides emergency housing for victims of domestic violence and their dependents, plus some or all of these additional services: counseling, advocacy, community education on domestic violence, support groups, twenty-four-hour crisis lines, or referral to other sources for services not provided by the spouse abuse program. The board of county commissioners may expend funds received from governmental or nongovernmental sources for the purpose of providing spouse abuse programs and providing grants to private organizations or agencies who provide such programs. No expenditure authorized by this section may be made to defray any expense of an organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the board in regard to the manner in which such funds will be expended and the services will be provided. An organization or agency and its program which receives these funds must be reviewed for approval annually by the board of county commissioners to determine its continued eligibility to receive funds under this section.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 27, 1985

CHAPTER 161

HOUSE BILL NO. 1390
(Representatives Unhjem, Moore)
(Senators Reiten, Todd, Holmberg)

JOB DEVELOPMENT AUTHORITIES

AN ACT to provide authority for the creation and operation of job development authorities or for a tax levy to support industrial development organizations; and to create and enact a new subsection to section 57-15-06.7 of the North Dakota Century Code, relating to a county tax levy for operation of job development authorities or for support of industrial development organizations.

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

SECTION 1. Job development authority - Board of directors' members qualifications. The board of county commissioners, by resolution, may create a job development authority for the county, or may discontinue a job development authority which has been created for the county. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by petition signed by electors of the county equal in number to ten percent of the votes cast in the county for the office of governor in the last general election. The question to discontinue the authority requires a majority of the electors voting on the question for passage. If the authority is created, a board of directors of not fewer than ten nor more than twenty members shall be appointed by the county commissioners and shall consist of representatives from the following groups, as they may exist:

1. Two members from the county commission.
2. One member from the city council or commission of each city within the county which has a population of five hundred or more.
3. One member selected from among the city governments of the remaining cities of the county.
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.

The county commissioners shall make these appointments from a slate of candidates submitted by the chambers of commerce within the county. If no chamber of commerce exists in the county, the nominations may be submitted by any civic or patriotic organization within the county. If names submitted are unacceptable, the county commission may request additional nominees. The members shall be appointed without regard to political affiliation and upon their fitness to serve as members by reason of character, experience, and training.

SECTION 2. Members of the job development authority board of directors - Term of office - Oath - Expenses. The members of the job development authority board of directors shall serve for a term of three years or until their successors are duly qualified. Terms of office shall begin on January first and shall be arranged so that the terms of office of approximately one-third of the members shall expire on December thirty-first of each year. Each member of the board shall qualify by taking the oath provided for civil officers. The oath shall be filed with the county auditor.

The board of directors shall annually elect members to serve as chairman, vice chairman, secretary and treasurer. They shall also select an executive committee with such powers and duties as may be delegated by the board of directors. Members may be reimbursed from funds available to the authority for mileage and expenses as provided in sections 44-08-04 and 54-06-09 but shall receive no compensation for service.

SECTION 3. Powers and duties of job development authorities. The job development authority shall use its financial and other resources to encourage and assist in the development of employment within the county. In fulfilling this objective, the job development authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the county.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real or personal property.
6. To certify a tax levy as provided in section 4 of this Act and to expend moneys raised by the tax for the purposes provided in this Act.
7. To insure or provide for insurance of any real or personal property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section.
10. To exercise any other powers necessary to carry out the purposes and provisions of this Act.

SECTION 4. Tax levy for job development authorities. The board of county commissioners of a county which has a job development authority shall establish a job development authority fund and levy a tax not exceeding the limitation in section 7 of this Act. The county treasurer shall keep the fund separate from other money of the county and transmit all funds received pursuant to this section within thirty days to the board of directors of the job development authority. The funds when paid to the job development authority shall be deposited in a special account in which other revenues of the job development authority are deposited and may be expended by the job development authority as provided in sections 2 and 3 of this Act.

SECTION 5. Organization of authorities - Temporary mill levy. During 1985 only, the board of county commissioners of a county in which a job development authority has been formed shall levy and collect a tax of one mill on the dollar of taxable valuation of property in the county, and shall make payment of the amount collected to the board of directors of the job development authority which may expend the funds as provided in sections 2 and 3 of this Act. Expense reimbursement of board members for meetings held before receipt of tax levy funds shall be made after the funds are received.

SECTION 6. Alternative levy for industrial development organizations. In lieu of establishing a job development authority as provided in sections 1 through 5 of this Act, the board of county commissioners in a county where an active industrial development organization exists may levy a tax not exceeding the limitation in section 7 of this Act. The funds from the levy may be used to enter into a contract with the industrial development organization for performance of the functions of a job development authority as provided in sections 1 through 5 of this Act.

SECTION 7. A new subsection to section 57-15-06.7 of the North Dakota Century Code is hereby created and enacted to read as follows:

A county levying a tax for a job development authority as provided in section 4 of this Act or for the support of an industrial development organization as provided in section 6 of this Act may levy a tax not exceeding four mills.

Approved March 28, 1985

CHAPTER 162

HOUSE BILL NO. 1438
(Larson)

SHERIFFS' COMMISSIONS

AN ACT to amend and reenact sections 11-15-08 and 11-15-09 of the North Dakota Century Code, relating to a sheriff's commission.

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

* SECTION 1. AMENDMENT. Section 11-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-08. Sheriff's commissions Commissions collected by sheriff. Except as otherwise provided in section 11-15-09, the sheriff shall receive is entitled to collect commissions on all moneys received and disbursed by him on an execution, order of sale, order of attachment, or decree for the sale of real or personal property, as follows:

1. On the first four hundred dollars, three percent.
2. On all moneys in excess of four hundred dollars and not exceeding one thousand dollars, two percent.
3. On all moneys in excess of one thousand dollars, one percent.

In all cases where personal property shall be is taken by the sheriff on an execution or under a warrant of attachment and applied in satisfaction of the debt without sale, he shall receive the sheriff is entitled to collect the percentage specified in this section based upon the appraised value of the property. The sheriff shall deliver the commissions to the county treasurer in accordance with section 11-15-14.

SECTION 2. AMENDMENT. Section 11-15-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-09. Sheriff's allowances Allowances when plaintiff bids in property at sale. When the person in whose favor an execution or order of sale shall have has been issued in by the district court shall bid in the property sold under the execution or pursuant to the

* NOTE: Section 11-15-08 was also amended by section 20 of Senate Bill No. 2086, chapter 82.

judgment, the sheriff or other person making the sale shall ~~receive~~ collect on behalf of the county the following fee, and no more:

1. When the amount for which the property is bid ~~is~~ on does not exceed one thousand dollars, ten dollars.
2. When the amount for which the property is bid ~~is~~ on exceeds one thousand dollars, twenty dollars.

Approved March 27, 1985

CHAPTER 163

HOUSE BILL NO. 1273
(Strinden)

MAINTENANCE OF NATURALIZATION RECORDS

AN ACT to amend and reenact section 11-17-02 of the North Dakota Century Code, relating to maintenance of naturalization records by the clerk of district court.

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

SECTION 1. AMENDMENT. Section 11-17-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-02. Clerk to keep naturalization records - Transfer to state
archivist. The clerk shall keep such books, records, and files, and such indexes as may be required by the government of the United States of America with reference to persons who, from the organization of the court, have declared, or may declare, their intention to become citizens of the United States, and with regard to persons who have been or may be admitted to citizenship in the United States of America by the district court in which he is clerk. Prior to July first of each year, the clerk shall transfer to the state archivist all records that have been kept under this section for five years or more. The state archivist shall maintain these records as archival resources under chapter 55-02.1.

Approved March 14, 1985

CHAPTER 164

SENATE BILL NO. 2393
(Senators Tallackson, Ingstad)
(Representatives Kingsbury, Skjerven)

RESOLUTION TO RECORD INSTRUMENTS

AN ACT to create and enact a new subsection to section 11-18-03 of the North Dakota Century Code, relating to recording of instruments by the register of deeds.

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

SECTION 1. A new subsection to section 11-18-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any plat, replat or auditor's lot accompanied by a resolution requesting the recording of the plat, replat or auditor's lot by the governing body of a political subdivision.

Approved March 22, 1985

CHAPTER 165

HOUSE BILL NO. 1610
(Ulmer)

PROPERTY BOUNDARY ALTERATION

AN ACT to create and enact a new section to chapter 11-18 of the North Dakota Century Code, relating to requiring the filing of a plat depicting any change in the existing boundaries of real property resulting from a court action or arbitration proceeding.

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

SECTION 1. A new section to chapter 11-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Alteration of existing boundary lines by court or arbitrator - Filing of plat required. Within thirty days of the issuance of any judgment or final decision in a court action or arbitration proceeding which establishes a boundary for real property that deviates from the existing boundaries established by the United States public land surveys, surveys using the North Dakota coordinate system, or any other official survey depicting the boundaries of real property, a plat must be filed in the office of the register of deeds in the county where the property is located, containing a diagrammatic depiction of the boundary as it existed prior to the judgment or final decision, and as established by the judgment or final decision. The plat must be prepared by a land surveyor registered pursuant to chapter 43-19.1. The plat must be filed in the same manner as provided in section 47-20.1-06, and must clearly indicate that it depicts changes in existing boundaries ordered by the judgment of a court or the final decision of an arbitrator. Specific reference to the property affected must appear prominently in the title of the plat. Liability for the costs and responsibility for filing of the plat must be set by the court or arbitrator issuing the judgment or final decision. The requirements of this section are in addition to any other filing or recordation otherwise required in this state.

Approved March 27, 1985

CHAPTER 166

SENATE BILL NO. 2268
(Senators Waldera, Holmberg, Matchie)
(Representatives Conmy, Kelly, Wentz)

CORONER FEES AND NOTICES

AN ACT to amend and reenact sections 11-19.1-15, 11-19.1-16, and 11-19.1-17 of the North Dakota Century Code, relating to the duties of coroners to notify relatives and fee responsibilities of the counties.

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

SECTION 1. AMENDMENT. Section 11-19.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19.1-15. Notice of next of kin, disposition of personal belongings - Disposition of body where next of kin cannot be found. The coroner ~~having taken of the county where a death is discovered shall take~~ charge of the case ~~shall~~ and notify relatives or friends of the deceased person, if known, as soon as possible by telephone, telegram, or otherwise, giving details of the death and disposition of the deceased person. If the relatives or friends of ~~such~~ the deceased are unknown, the coroner shall dispose of the personal effects and body in the following manner:

1. After using such clothing as may be necessary in the burial of the body, the remaining personal effects of the deceased shall be turned over to the public administrator for disposition of such personal property in accordance with the laws, regulations, and policies governing the office of the public administrator.
2. The remains shall be:
 - a. Disposed of in accordance with the provisions of section 23-06-14; or
 - b. Buried in accordance with the laws governing the burial of indigent persons within this state.

SECTION 2. AMENDMENT. Section 11-19.1-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19.1-16. Coroner's fees paid out of county treasury - Fees to be charged by coroner - Duty of county auditor - Certain expenses paid by the state.

1. The fees and mileage as provided by section 11-10-15 allowed to the coroner shall be paid out of the county treasury of the county of residence of the deceased person and the coroner's bill shall be presented to the county auditor and shall be paid upon approval and order of the board of county commissioners.
2. The state health department of health shall audit, and if found correct, certify for payment by the state treasurer duly itemized and verified claims of the coroner, his medical deputy and pathologist for the necessary expenses incurred or paid by him in the performance of an autopsy of a child whose cause of death was suspected to have been the sudden infant death syndrome.

SECTION 3. AMENDMENT. Section 11-19.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-19.1-17. Application. ~~The provisions of this This~~ chapter shall apply ~~applies~~ to every county in this state having a population of eight thousand or more according to the last preceding official federal census, and the provisions of chapter 11-19 and section 11-10-02 shall are not be applicable to such counties. ~~The provisions of this This~~ chapter shall does not apply to counties having a population of less than eight thousand according to the last preceding official federal census and such counties shall be are governed by the provisions of chapter 11-19 and section 11-10-02, except that coroners shall be appointed in these counties according to section 11-19.1-03 and these counties shall pay coroner's fees to other counties under subsection 1 of section 11-19.1-16.

Approved March 22, 1985

CHAPTER 167

SENATE BILL NO. 2360
(Senator Freborg)
(Representatives Hill, O'Shea)

COUNTY ZONING COMMISSION MEMBERSHIP

AN ACT to amend and reenact section 11-33-04 of the North Dakota Century Code, relating to membership on county zoning commissions.

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

SECTION 1. AMENDMENT. Section 11-33-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-33-04. County planning commissions authorized - Membership. The board of county commissioners of any county desiring to avail itself of the powers conferred by this chapter, shall establish, by resolution, a county planning commission to recommend the boundaries of the various county zoning districts and appropriate regulations and restrictions to be established therein. Membership of such commission shall be composed of nine members, two of whom shall be appointed from the board of county commissioners, and two from the governing body of the city designated as the county seat of the county to serve for their respective terms of elective office. In counties with three-member boards of county commissioners, the planning commission consists of seven members, of whom at least one must be appointed from the governing body of the city that is the county seat, and of whom at most one may be appointed from the board of county commissioners. In counties with five-member boards of county commissioners the planning commission consists of nine members, of whom at least two must be appointed from the governing body of the city that is the county seat, and of whom at most two may be appointed from the board of county commissioners. The term of an ex officio member is coterminous with the member's term in the underlying office. The remaining five members shall be appointed from the county at large. In counties that elect county commissioners from districts, at least one at large member of the planning commission must be appointed from each district. When appointments to said commission are first made, three members-at-large shall be appointed for a two-year term and two members-at-large for a four-year term, after which all subsequent appointments for members-at-large shall be for a four-year term. Appointments to fill vacancies shall be for the unexpired portion of the term. All appointments to the county planning commission shall be made by the board of county commissioners.

Approved March 27, 1985

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 168

SENATE BILL NO. 2407
(Wenstrom)

JUVENILE DETENTION CONTRACTS

AN ACT to amend and reenact section 12-44.1-02 of the North Dakota Century Code, relating to jail contracts.

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

SECTION 1. AMENDMENT. Section 12-44.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-02. Establishing jails - Jail contracts - Regional corrections centers. For the confinement of lawfully committed persons, the governing body of a county or city shall do or shall participate in the doing of, one of the following:

1. Establishing and maintaining a jail at county or city expense.
2. Contracting for jail services and use of jail facilities with another county or city maintaining a jail, with a regional corrections center, or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a regional corrections center in conjunction with other counties and cities.

A county or city may additionally contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota jail or juvenile detention center, or for the confinement of lawfully committed North Dakota inmates in a county or city facility of such other state. A city or county may contract for juvenile detention services with a privately operated juvenile detention center. Contracts with private agencies providing juvenile detention services may be entered into for up to seven years.

Approved March 22, 1985

CHAPTER 169

HOUSE BILL NO. 1370
(Wald)

JAIL INMATE HOUSING

AN ACT to amend and reenact sections 12-44.1-09 and 12-44.1-10 of the North Dakota Century Code, relating to housing of and restrictions on inmates of jails; and to repeal subsection 4 of section 12-44.1-08 and section 32-22-39 of the North Dakota Century Code, relating to employment of additional jailers for federal prisoners and to liability of jailers for failing to provide to a prisoner a copy of the commitment order.

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

SECTION 1. AMENDMENT. Section 12-44.1-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-09. Housing of inmates. In grade one and grade two jails, and, where practicable, in grade three jails, the following groups of inmates shall must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the jail administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from detained witnesses and other persons detained under civil commitment, unless authorized to be housed together by the jail administrator for security, order, or rehabilitation.
5. Mentally disturbed inmates and other inmates with special needs as determined by the jail administrator from the remainder of the jail population, unless authorized to be housed together by the jail administrator for security, order, or rehabilitation.

6. Special management inmates whose behavior presents a serious threat to the safety and security of the jail, the inmate, the staff, or the general inmate population from the remainder of the jail population.

SECTION 2. AMENDMENT. Section 12-44.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-10. **Detained witnesses and pretrial detainees.** Detained witnesses and persons held in custody awaiting arraignment or trial shall not be restricted in their activities to any extent greater than required to maintain order and security and to assure their appearance at the arraignment or trial for which they are held, nor shall they be confined in any room or cell area where convicted offenders are actually imprisoned. Witnesses and pretrial detainees shall not be required to do labor other than keeping their living areas clean nor shall they be required to participate in jail programs.

SECTION 3. REPEAL. Section 32-22-39 of the North Dakota Century Code and subsection 4 of section 12-44.1-08 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 22, 1985

CHAPTER 170

SENATE BILL NO. 2329
(Senator Lodoen)
(Representative Hughes)

JAIL INMATE WORK RELEASE

AN ACT to create and enact a new section to chapter 12-44.1 and a new chapter to title 65 of the North Dakota Century Code, relating to an inmate work release program for city and county jails and workmen's compensation coverage for participating inmates.

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

SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inmate work release program. The governing body of a city or county, with the concurrence of affected parties, may provide for a work release program for inmates confined in a city or county penal institution. Work projects may include public service and community projects, and may utilize any particular skill or trade of participating inmates. At the discretion of the judge with jurisdiction over a participating inmate, for every eight hours of work by a participating inmate, the inmate's period of confinement shall be reduced by two days. The governing body shall take measures to maintain jail security among participating inmates.

SECTION 2. A new chapter to title 65 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 in a fight, riot, recreational activity, or other incident not directly related to the inmate's work assignment.

Coverage of inmates - Conditions.

1. If an inmate in performance of work in connection with the maintenance of the institution, or with any industry maintained therein, or with any public service activity, sustains a compensable injury, the inmate may, upon being released from the institution, or after discharge from public service, be awarded and paid compensation under the provision of this title.
2. Claims under this chapter shall be filed and processed pursuant to section 65-05-01, except that an inmate shall also have one year from the date of first release from the institution or discharge from public service to file a claim.
3. Workmen's compensation benefits under this chapter accrue and are payable from the time of the inmate's release from the institution or after discharge from public service. Disability benefits shall be computed according to the methods provided in chapter 65-05. The inmate's weekly wage shall be computed using either the actual wage paid to the inmate or the federal minimum wage as of the date of injury, whichever is higher.
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 1 of section 65-05-17.

Workmen's compensation coverage of inmates. Any county or city may, by resolution of the governing body, elect to cover its inmates with workmen's compensation benefits in accordance with the provisions of this chapter. Any county or city which makes this election shall not be liable to respond in damages at common law or by statute for injuries to or the death of any inmate whenever the provisions of this chapter have been met and the premiums as set by the bureau are not in default.

Approved March 27, 1985

CHAPTER 171

SENATE BILL NO. 2220
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

PENITENTIARY INMATE ACCOUNTS

AN ACT to amend and reenact section 12-48-15 of the North Dakota Century Code, relating to penitentiary inmate accounts.

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

SECTION 1. AMENDMENT. Section 12-48-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-15. Disposition of moneys earned - Warden to keep account of money earned by inmates - Investment in interest-bearing accounts.

1. The warden of the penitentiary shall keep an account for each inmate. Fifty percent of the earnings of ~~each inmate~~ inmates shall be deposited to the credit of ~~his~~ their account until ~~he has~~ they have accumulated in that account ~~the sum of one hundred dollars~~ a sum of money as provided by penitentiary rules and regulations from his their earnings at the penitentiary, or such portion thereof as ~~he has~~ they have earned at the time of ~~his~~ their release their discharge. All moneys in the inmate's account shall be paid to ~~him~~ the inmate in full at the time of ~~his~~ their release when discharged.
2. ~~The inmate~~ Inmates may, in writing, authorize the warden or ~~his~~ his designee to deposit any of ~~his~~ their accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account shall be a two signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal.
3. Other inmate income or funds from sources outside of the penitentiary may be directly deposited or invested by the inmate in any bank or other organization, unless

sentencing stipulations, court orders, the inmate's competency, or other interests of the inmate require that the warden deposit such income or funds or a portion thereof in the above-noted Bank of North Dakota account for the inmate's benefit and protection. Before making such a deposit of funds or income from sources outside of the penitentiary for the inmate's benefit and protection, the warden must receive the approval of the director of institutions and provide a written letter of explanation to the inmate. Funds directly invested or deposited by an inmate inmates into his their independent account accounts, even when assisted in doing so by an officer or employee of the penitentiary, shall in no way make the penitentiary or its officers or employees responsible or accountable for such inmate's investments and deposits.

4. The warden, through his staff, is responsible for guiding the inmate inmates in making proper use of his their funds to pay his their obligations, and, if possible, to provide for his their dependent relatives, or to provide himself with for themselves medical, surgical, or dental treatment or services not generally provided by the state. The one hundred dollar portion of sum of money as provided by penitentiary rules and regulations from each inmate's earnings required to be deposited and accumulated by this section shall not be available to the inmate until his release discharge. The remainder of the inmate's earnings, including interest earned, shall be available to the inmate under the supervision and control of the warden and his designees or designee.

Approved March 22, 1985

CHAPTER 172

SENATE BILL NO. 2099
(Olson)

FAILURE TO APPEAR FOR PAROLE MEETING

AN ACT to amend and reenact section 12-59-15 of the North Dakota Century Code, relating to violations of parole agreements and redetermining the period remaining in supervision.

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

SECTION 1. AMENDMENT. Section 12-59-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-15. Breach of parole - Hearings - Order of recommitment.

1. When it is alleged that a parolee has violated the conditions of the parole agreement, the chief parole officer may issue a warrant for the arrest of the parolee.
2. If an alleged violation is for failing to appear for any meeting required by the parolee's supervisory officer without just cause or for leaving the jurisdiction without permission, the parole board may suspend the running of the time period of parole until the parolee is in the custody of any law enforcement personnel in the state.
3. The parolee shall be entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause or reasonable grounds to believe that the parolee violated the conditions of the parole agreement.
- 3- 4. The preliminary hearing shall be conducted before the chief parole officer or any other independent hearing officer authorized by the chief parole officer, but in no case shall it be conducted before anyone directly involved in the case.

5. If at the preliminary hearing the hearing officer determines that the parolee violated the conditions of the parole agreement by failing to appear for any meeting required by the parolee's supervisory officer without just cause or by leaving the jurisdiction without permission, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.
- ~~4-~~ 6. If the hearing officer determines there is probable cause, the parolee shall be returned to the penitentiary or state farm, 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 as provided in his sentence.
- ~~5-~~ 7. At any hearing pursuant to this section a record shall be made, and the parolee shall have:
- a. Written notice of the purpose of the hearing and the alleged violations.
 - b. The opportunity to be heard in person and present witnesses and documentary evidence.
 - c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that such confrontation would create a risk of harm to the witness.
 - d. A written statement as to the reasons for the decision.

Approved March 22, 1985

CRIMINAL CODE

CHAPTER 173

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

UNIFORM CRIMINAL RESPONSIBILITY AND POST-TRIAL DISPOSITION ACT

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

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

SECTION 1. Standard for lack of criminal responsibility.

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

conjunction with other evidence to establish mental illness or defect.

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

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

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

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

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

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

SECTION 5. Examination at request of prosecuting attorney.

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

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

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

SECTION 8. Recording of examination.

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

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

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

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

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

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

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

SECTION 14. Use of evidence obtained from examination.

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

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

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

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

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

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

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

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

SECTION 20. Jurisdiction of court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 26. Procedures.

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

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

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

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

12.1-04-02. Intoxication.

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

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

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

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

Approved April 4, 1985

CHAPTER 174

SENATE BILL NO. 2425
(Parker)

MURDER AND MANSLAUGHTER

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

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

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

12.1-16-01. Murder.

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

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

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

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

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

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

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

Approved March 29, 1985

CHAPTER 175

SENATE BILL NO. 2102
(Olson)

ASSAULT PENALTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved March 22, 1985

CHAPTER 176

SENATE BILL NO. 2271
(Olson)

SEXUAL CONTACT DEFINED

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

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

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

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

Approved March 22, 1985

CHAPTER 177

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

CHILD SEXUAL PERFORMANCES PROHIBITED

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

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

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

Definitions. As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

Approved March 27, 1985

CHAPTER 178

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

HOTEL FIRE NEGLIGENCE PENALTY

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

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

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

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

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

Approved March 22, 1985

CHAPTER 179

HOUSE BILL NO. 1539
(Gates)

DEFRAUDING SECURED CREDITORS

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

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

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

12.1-23-08. Defrauding secured creditors.

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

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

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

Approved March 29, 1985

CHAPTER 180

HOUSE BILL NO. 1334
(Unhjem)

CABLE TELEVISION THEFT

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

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

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

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

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

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

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

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

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

Approved March 29, 1985

CHAPTER 181

SENATE BILL NO. 2480
(Christensen)

OBSCENITY

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

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

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

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

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

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

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

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

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

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

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

Approved March 28, 1985

CHAPTER 182

HOUSE BILL NO. 1615
(Shaw)

INDECENT MATERIAL DISTRIBUTION

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

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

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

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

Approved March 31, 1985

CHAPTER 183

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

SUNDAY CLOSING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved April 15, 1985

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 184

SENATE BILL NO. 2313
(Ingstad)

LATE PAYMENT CHARGES ON ACCOUNTS RECEIVABLE

AN ACT to amend and reenact section 13-01-14 of the North Dakota Century Code, relating to late payment charges on accounts receivable.

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

SECTION 1. AMENDMENT. Section 13-01-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-01-14. Late payment charge on accounts receivable.

1. A creditor may charge, receive, and collect a late payment charge on all money due on account from thirty days after the obligation of the debtor to pay has been incurred.
2. ~~The~~ Except as provided in subsection 4, the late payment charge may not exceed one and three-fourths percent per month.
3. The late payment charge provided in this section may be charged only if, when the obligation was incurred, the creditor did not intend to extend any credit beyond thirty days and any late payment of the obligation was unanticipated.
4. No creditor may charge, receive, or collect a late payment charge on medical or hospital bills, except that if no payment has been made on the account within the last ninety days, a late payment charge may be imposed at a rate that does not exceed one percent per month, but the charge cannot exceed twenty-five dollars per month.
5. This section does not apply to:
 - a. Money due on retail installment contracts, as defined in chapter 51-13.
 - b. Money due on revolving charge accounts, as defined in chapter 51-14.
 - c. ~~Money due on medical, hospital, and residential utility bills.~~

Approved April 15, 1985

CHAPTER 185

SENATE BILL NO. 2357
(Lips, Nething)

INTEREST ON DELINQUENT ACCOUNTS

AN ACT to provide for the payment of interest on delinquent accounts.

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

SECTION 1. Prompt payment required. Every state agency, political subdivision, or school district, which acquires property or services pursuant to a contract with a business shall pay for each complete delivered item of property or service on the date required by contract between such business and agency or, if no date for payment is specified by contract, within forty-five days after receipt of the invoice covering the delivered items or services. The acquisition of property includes the rental of real or personal property.

SECTION 2. When interest payment required. Interest shall accrue and be made on payments overdue under section 1 of this Act at the rate of one and three-fourths percent per month, unless a different rate is specified within the contract upon which the claim is based. Interest shall accrue beginning on the day after payment is due, if payment due date is specified by contract, or on the day of receipt of the invoice covering the delivered goods or services, if payment is not made within forty-five days. Interest ceases to accrue on the date payment is made.

SECTION 3. Interest shall compound. Any interest which remains unpaid at the end of any forty-five-day period or which remains unpaid at the end of any specified period provided by contract shall be added to the principal amount of the debt and shall thereafter accumulate interest.

SECTION 4. Additional appropriation prohibited. An agency of the state is prohibited from seeking additional appropriations to pay interest which accrues as a result of the agency's failure to make payments as required by section 1 of this Act.

SECTION 5. When Act is inapplicable. If the agency or business fails to timely pay interest as required by section 2 and section 6 of this Act and the failure is the result of a dispute between the agency and the business, or a dispute between the business and a subcontractor or supplier, over the amount due or over compliance with the contract, the provisions of this Act are inapplicable. If the settlement of a dispute is found in favor of the business, or the subcontractor or supplier, interest shall accrue and be paid as provided in section 3.

SECTION 6. Subcontractor prompt payment required. Upon payment by a state agency, political subdivision, school district, or agency of the United States, a business which has acquired under contract, property or services in connection with its contract with such agency, political subdivision, or school district, from a subcontractor or supplier, shall pay such subcontractor or supplier within forty-five days after payment from such agency. Interest at the rate specified in section 2 of this Act shall accrue and is due any subcontractor or supplier who is not paid within forty-five days after the business receives payment from the agency, political subdivision, or school district, unless otherwise provided by contract between the business and the subcontractor or supplier.

Approved March 29, 1985

CHAPTER 186

SENATE BILL NO. 2173
(Committee on Industry, Business and Labor)
(At the request of the Commission on Uniform State Laws)

UNIFORM FRAUDULENT TRANSFER ACT

AN ACT to adopt the Uniform Fraudulent Transfer Act, relating to fraudulent property transfers; to amend and reenact section 13-01-03 of the North Dakota Century Code, relating to creditor preferences; and to repeal sections 13-01-05, 13-01-06, 13-01-07, 13-01-08, 13-01-09, and chapter 13-02 of the North Dakota Century Code, relating to fraudulent property transfers.

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

SECTION 1. Definitions. As used in sections 1 through 9:

1. "Affiliate" means:

- a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as a fiduciary or agent without sole discretionary power to vote the securities or solely to secure a debt, if the person has not exercised the power to vote;
- b. A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as a fiduciary or agent without sole power to vote the securities or solely to secure a debt, if the person has not in fact exercised the power to vote;
- c. A person whose business is operated by the debtor under a lease or other agreement, or a person

- substantially all of whose assets are controlled by the debtor; or
- d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
2. "Asset" means property of a debtor, excluding property to the extent it is encumbered by a valid lien, property to the extent it is generally exempt under nonbankruptcy law, or an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
3. "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
4. "Creditor" means a person who has a claim.
5. "Debt" means liability on a claim.
6. "Debtor" means a person who is liable on a claim.
7. a. If the debtor is an individual, an "insider" includes a relative of the debtor or of a general partner of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a corporation of which the debtor is a director, officer, or person in control.
- b. If the debtor is a corporation, an "insider" includes a director of the debtor, an officer of the debtor, a person in control of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a relative of a general partner, director, officer, or person in control of the debtor.
- c. If the debtor is a partnership, an "insider" includes a general partner in the debtor, a relative of a general partner in, of a general partner of, or of a person in control of the debtor, another partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a person in control of the debtor.
- d. An "insider" also includes an affiliate, or an insider of an affiliate as if the affiliate were the debtor, and a managing agent of the debtor.

8. "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien, a common-law lien, or a statutory lien.
9. "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.
10. "Property" means anything that may be the subject of ownership.
11. "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.
12. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.
13. "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal process or proceedings.

SECTION 2. Insolvency.

1. A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation. A debtor who is generally not paying debts as they become due is presumed to be insolvent. A partnership is insolvent if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.
2. Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under sections 1 through 9.
3. Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

SECTION 3. Value.

1. Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.
2. For the purposes of subdivision b of subsection 1 of section 4 and section 5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.
3. A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

SECTION 4. Transfers fraudulent as to present and future creditors.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
 - a. With actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - b. Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
2. In determining actual intent under subdivision a of subsection 1, consideration may be given, among other factors, to whether:
 - a. The transfer or obligation was to an insider;
 - b. The debtor retained possession or control of the property transferred after the transfer;
 - c. The transfer or obligation was disclosed or concealed;

- d. Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- e. The transfer was of substantially all the debtor's assets;
- f. The debtor absconded;
- g. The debtor removed or concealed assets;
- h. The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- i. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- j. The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- k. The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

SECTION 5. Transfers fraudulent as to present creditors.

- 1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
- 2. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

SECTION 6. When transfer is made or obligation is incurred. For the purposes of sections 1 through 9:

- 1. A transfer is made with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee. A transfer is made

with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under sections 1 through 9 that is superior to the interest of the transferee.

2. If applicable law permits the transfer to be perfected as provided in subsection 1 and the transfer is not so perfected before the commencement of an action for relief under sections 1 through 9, the transfer is deemed to have been made immediately before the commencement of the action.
3. If applicable law does not permit the transfer to be perfected as provided in subsection 1, the transfer is made when it becomes effective between the debtor and the transferee.
4. A transfer is not made until the debtor has acquired rights in the asset transferred.
5. An oral obligation is incurred when it becomes effective between the parties. An obligation evidenced by a writing is incurred when the writing executed by the obligor is delivered to or for the benefit of the obligee.

SECTION 7. Remedies of creditors.

1. In an action for relief against a transfer or obligation under sections 1 through 9, a creditor, subject to the limitations in section 8, may obtain:
 - a. Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
 - b. Attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter 32-08.1; or
 - c. Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property, an appointment of a receiver to take charge of the asset transferred or of other property of the transferee, or any other relief the circumstances may require.
2. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

SECTION 8. Defenses - Liability - Protection of transferee.

1. A transfer or obligation is not voidable under subdivision a of subsection 1 of section 4 against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.
2. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under subdivision a of subsection 1 of section 7, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the first transferee of the asset or the person for whose benefit the transfer was made or any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.
3. If the judgment under subsection 2 is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.
4. Notwithstanding voidability of a transfer or an obligation under sections 1 through 9, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to a lien on or a right to retain any interest in the asset transferred, enforcement of any obligation incurred, or a reduction in the amount of the liability on the judgment.
5. A transfer is not voidable under subdivision b of subsection 1 of section 4 or section 5 if the transfer results from termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law or enforcement of a security interest in compliance with chapter 41-09.
6. A transfer is not voidable under subsection 2 of section 5:
 - a. To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;
 - b. If made in the ordinary course of business or financial affairs of the debtor and the insider; or
 - c. If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

SECTION 9. Extinguishment of claim for relief. A claim for relief with respect to a fraudulent transfer or obligation under sections 1 through 9 is extinguished unless action is brought:

1. Under subdivision a of subsection 1 of section 4, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
2. Under subdivision b of subsection 1 of section 4 or subsection 1 of section 5, within four years after the transfer was made or the obligation was incurred; or
3. Under subsection 2 of section 5, within one year after the transfer was made or the obligation was incurred.

SECTION 10. Supplementary provisions. Unless displaced by the provisions of sections 1 through 9, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement their provisions.

SECTION 11. AMENDMENT. Section 13-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-01-03. Creditors may be preferred. A debtor, except as otherwise provided in section 13-01-09, 5 of this Act, a debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

SECTION 12. REPEAL. Sections 13-01-05, 13-01-06, 13-01-07, 13-01-08, 13-01-09, and chapter 13-02 of the North Dakota Century Code are hereby repealed.

Approved March 28, 1985

CHAPTER 187

HOUSE BILL NO. 1184
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

EXAMINATIONS OF SMALL LOAN OR CONSUMER FINANCE COMPANIES

AN ACT to amend and reenact subsection 1 of section 13-03-09 and subsection 1 of section 13-03.1-11 of the North Dakota Century Code, relating to the frequency of examinations of small loan companies and consumer finance companies.

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

SECTION 1. AMENDMENT. Subsection 1 of section 13-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. At least once each ~~year~~ thirty months the commissioner or ~~his~~ duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers, annual reports, and records of such licensee so far as they pertain to the business licensed under this chapter. The actual cost of every examination shall be charged by the commissioner for every licensee so examined. Such costs shall be paid to the state treasurer.

SECTION 2. AMENDMENT. Subsection 1 of section 13-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The administrator shall conduct a yearly ~~At least once each thirty months the administrator or his a duly authorized representative shall make an examination of the~~ loans, business, and records of every licensee. In addition, for the purpose of rediscovering violations of this chapter or securing information lawfully required, the administrator may at any time investigate the loans, business, and records of any lender. For these purposes ~~he the administrator~~ shall have free and reasonable access to the offices, places of business, and records of the lender. The actual costs of the examination shall be paid by the licensee.

Approved March 14, 1985

CHAPTER 188

SENATE BILL NO. 2333
(Senator Langley)
(Representative Dotzenrod)

CONSUMER FINANCE LOAN CEILINGS

AN ACT to amend and reenact sections 13-03.1-03 and 13-03.1-15 of the North Dakota Century Code, relating to the maximum loan ceiling for consumer finance loan businesses.

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

SECTION 1. AMENDMENT. Section 13-03.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03.1-03. Scope. Persons licensed under the provisions of this chapter may engage in the business of lending in amounts of more than one thousand dollars and not more than ~~fifteen~~ thirty thousand dollars and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than that permitted by section 47-14-09. This chapter shall not apply to loans made under chapter 13-03, but persons licensed under that chapter may obtain licenses to make loans under this chapter.

SECTION 2. AMENDMENT. Section 13-03.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03.1-15. Maximum charges permitted - Installment payments - Other charges.

1. Repealed by S.B. 1981, ch. 463, § 3 Every licensee may make loans, including revolving loans, in any principal amount not less than one thousand dollars and not more than thirty thousand dollars and may contract for, receive, or collect interest on such loans at any rate agreed upon by the licensee and the borrower.
2. Every loan contract shall require payment of principal and charges in installments which shall be payable at

approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall be substantially larger than any preceding installment, except in the case of revolving loan contracts. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.

3. Interest may be collected on the unpaid balance of any judgment at a rate not exceeding that permitted by section 47-14-09.
4. No further amount whatsoever in addition to the charges provided for in this chapter shall be directly or indirectly charged, contracted for, or received. No agreement may provide for the payment by the debtor of attorney fees. However, such restrictions shall not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, an amount not exceeding seventy-five dollars for closing costs actually incurred in connection with a loan secured by an interest in land (including fees or premiums for title examination, title insurance, and surveys, fees for notarizing title or mortgage documents, and appraisal fees), and the identifiable charge or premium for insurance provided for in section 13-03.1-17. A bona fide error of law or fact is not deemed a violation of this section. A bona fide clerical error in the calculation of interest is not deemed a violation of this section if the licensee corrects the error.
5. No licensee shall have outstanding to the same person at the same time a loan under this chapter and also under chapter 13-03.

Approved March 22, 1985

CHAPTER 189

HOUSE BILL NO. 1121
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

MONEY BROKER SURETY BONDS

AN ACT to amend and reenact section 13-04.1-04 of the North Dakota Century Code, relating to the surety bond requirement for money brokers.

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

SECTION 1. AMENDMENT. Section 13-04.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-04.1-04. Fee and bond to accompany application for money broker license. The application for license shall be accompanied by the annual license fee for a money broker license, which is fixed at one hundred dollars, and by a surety bond in the sum of ~~ten~~ twenty-five thousand dollars.

Approved March 14, 1985

DOMESTIC RELATIONS AND PERSONS

CHAPTER 190

SENATE BILL NO. 2174
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

UNIFORM PREMARITAL AGREEMENT ACT

AN ACT to adopt the Uniform Premarital Agreement Act, relating to the legal requirements for premarital agreements; and to amend and reenact section 9-06-04 of the North Dakota Century Code, relating to contracts which must be written to be valid.

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

SECTION 1. Definitions. As used in sections 1 through 8:

1. A person has "notice" of a fact if the person has knowledge of it, receives a notification of it, or has reason to know that it exists from the facts and circumstances known to the person.
2. "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.
3. "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

SECTION 2. Formalities. A premarital agreement must be a document signed by both parties. It is enforceable without consideration.

SECTION 3. Content.

1. Parties to a premarital agreement may contract with respect to:
 - a. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.
 - b. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a

security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.

- c. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event.
- d. The modification or elimination of spousal support.
- e. The making of a will, trust, or other arrangement to carry out the provisions of the agreement.
- f. The ownership rights in and disposition of the death benefit from a life insurance policy.
- g. The choice of law governing the construction of the agreement.
- h. Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

2. The right of a child to support may not be adversely affected by a premarital agreement.

SECTION 4. Effect of marriage. A premarital agreement becomes effective upon marriage.

SECTION 5. Amendment - Revocation. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

SECTION 6. Enforcement.

1. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:
 - a. That party did not execute the agreement voluntarily; or
 - b. The agreement was unconscionable when it was executed and, before execution of the agreement, that party:
 - (1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
 - (2) Did not voluntarily sign a document expressly waiving any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

- (3) Did not have notice of the property or financial obligations of the other party.
2. If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.
3. An issue of unconscionability of a premarital agreement is for decision by the court as a matter of law.

SECTION 7. Enforcement of unconscionable provisions. Notwithstanding the other provisions of this Act, if a court finds that the enforcement of a premarital agreement would be clearly unconscionable, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provisions, or limit the application of an unconscionable provision to avoid an unconscionable result.

SECTION 8. Enforcement - Void marriage. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

SECTION 9. Limitation of actions. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

SECTION 10. AMENDMENT. Section 9-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9-06-04. Contracts invalid unless in writing - Statute of frauds. The following contracts are invalid, unless the same or some note or memorandum thereof is in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;
2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 22-01-05;
3. An agreement made upon consideration of marriage other than a mutual promise to marry;
4. An agreement for the leasing for a longer period than one year, or for the sale, of real property, or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing subscribed by the party sought to be charged.

CHAPTER 191

SENATE BILL NO. 2438
(Senators Stenehjelm, J. Meyer, Christensen)
(Representatives Conmy, Kuchera)

DIVORCE AND SEPARATION RESIDENCY

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 divorce and for separation.

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

SECTION 1. AMENDMENT. Section 14-05-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-17. Residence requirements. A divorce ~~must~~ may not be granted unless the plaintiff in good faith has been a resident of the state for ~~twelve~~ six months next preceding the ~~commencement of the action~~ entry of the decree of divorce.

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

14-06-06. Residence requirements. ~~No action shall be brought or maintained under the provisions of this chapter~~ A decree of separation may not be granted unless the plaintiff in good faith has been a resident of this state for ~~twelve~~ six months next preceding the ~~commencement of the action~~ entry of the decree of separation.

Approved April 11, 1985

CHAPTER 192

HOUSE BILL NO. 1486
(Kretschmar)

DIVORCE PROPERTY DIVISION ENFORCEMENT

AN ACT to create and enact a new section to chapter 14-05 and a new section to chapter 14-06 of the North Dakota Century Code, relating to orders dividing property in divorce and separation enforceable by contempt and removing certain exemptions from process upon execution of divorce or separation judgments ordering division of property; and to amend and reenact section 28-22-01 of the North Dakota Century Code, relating to property exempt from process.

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

SECTION 1. A new section to chapter 14-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available. Failure to comply with the provisions of a divorce decree relating to distribution of the property of the parties may be punished as civil contempt. A party may also execute on a money judgment, and the obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

SECTION 2. A new section to chapter 14-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Money judgment to secure division of property enforceable by contempt - Exemptions from process not available. Failure to comply with provisions of a decree of separation relating to distribution of the property of the parties may be punished as civil contempt. A party may also execute on a money judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

SECTION 3. AMENDMENT. Section 28-22-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-01. Property exempt from all process. Except as hereinafter otherwise provided, the property mentioned in this chapter is exempt to the head of a family, as defined by section 28-22-01.1, from attachment or mesne process and from levy and sale upon execution and from any other final process issued from any court.

Approved April 4, 1985

CHAPTER 193

SENATE BILL NO. 2307
(Senators Mushik, Christensen, Redlin)
(Representatives O'Connell, A. Olson, R. Hausauer)

DISPLACED HOMEMAKER PROGRAM

AN ACT to amend and reenact subsection 2 of section 14-06.1-02 and section 14-06.1-12 of the North Dakota Century Code, relating to the citizen advisory body to the displaced homemaker program; and to provide an appropriation.

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

SECTION 1. AMENDMENT. Subsection 2 of section 14-06.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Displaced homemaker" means an individual who:

- a. is at least eighteen years of age Has worked in the individual's home providing unpaid services for household members;
- b. Has been or is unemployed or underemployed;
- c. Has been economically dependent on a spouse; parent; legal guardian; or on governmental income maintenance;
- d. Wishes to be gainfully employed to become economically independent;
- e. Lacks basic academic skills to be gainfully employable had or will have difficulty finding employment; and
- ~~f.~~ d. (1) Is widowed, divorced, separated, or abandoned; or
(2) Because of the disability of the individual's spouse, parent, or legal guardian, is displaced from the individual's former economically dependent role.

SECTION 2. AMENDMENT. Section 14-06.1-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-06.1-12. Citizen advisory structure - Reimbursement of members. The superintendent shall establish an advisory body to the department which shall consist of one citizen members member representing each planning region of the state and two citizen members to be selected at large. Membership may represent displaced homemakers, local service providers, appropriate agencies, employers, educators, and the general public. The advisory body shall provide public information and community education regarding the program and appropriate recommendations to the superintendent regarding the planning, operation, and evaluation of the activities mandated by this chapter. This body shall annually provide written evaluation of the program to the superintendent who will provide this evaluation to the legislative assembly each biennium in addition to the evaluation required in accordance with section 14-06.1-13. Advisory body members are entitled to be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at advisory body meetings.

SECTION 3. Continuing appropriation.

1. There is hereby appropriated out of any moneys in the displaced homemaker account in the state treasury, not otherwise appropriated, the sum of \$250,000 per biennium, or so much thereof as may be necessary to the superintendent of public instruction for the purpose of providing services for displaced homemakers under chapter 14-06.1. At least ninety-five percent of the funds appropriated by this subsection must be used by the superintendent for the direct provision of displaced homemaker services.
2. There is hereby appropriated out of any additional funds that may become available through grants, gifts, or other sources to the superintendent of public instruction for the purpose of providing services for displaced homemakers. Unless otherwise required by federal eligibility standards, at least ninety-five percent of the funds acquired and appropriated to the superintendent by this subsection must be used by the superintendent for the direct provision of displaced homemaker services. Funds appropriated pursuant to this subsection may be spent only upon approval of the emergency commission.

Approved April 16, 1985

CHAPTER 194

SENATE BILL NO. 2262
(Senators Christensen, Stenehjem)
(Representative Wentz)

ADULT ABUSE PROTECTION ORDERS

AN ACT to amend and reenact section 14-07.1-02 and subsection 2 of section 14-07.1-03 of the North Dakota Century Code, relating to adult abuse protection orders; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 14-07.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-02. Adult abuse - Protection order.

1. An action for a protection order commenced by a verified application alleging the existence of adult abuse may be brought in district court by any spouse or, family member or, former spouse in the district court, parent, child, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time 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 an adult abuse protection order. An action may be brought under this section, regardless of whether or not 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 shall be made upon the respondent not less than 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 adult abuse, 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 any other party or minor children of the parties person.
 - b. Excluding either party the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of the other another person against whom the adult abuse is occurring, or from an adult abuse care facility, where 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 an adult abuse program or other agency which provides professional services which 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 shall 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.
5. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
6. No order or agreement under this section shall affect title to any real property in any matter.

SECTION 2. AMENDMENT. Subsection 2 of section 14-07.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. An ex parte temporary protection order may include:
 - a. Restraining any party from committing acts of abuse on the other another person.
 - b. Excluding any party the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of the other another person, or from an adult abuse shelter care facility.

- c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 28, 1985

CHAPTER 195

SENATE BILL NO. 2368
(Senators Stenehjem, Christensen)
(Representatives Cleveland, Unhjem)

ADULT ABUSE PROGRAMS RECORDS CONFIDENTIAL

AN ACT to create and enact a new section to chapter 14-07.2 of the North Dakota Century Code, relating to the confidentiality of adult abuse program records; to provide a penalty; and to declare an emergency.

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

SECTION 1. A new section to chapter 14-07.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Adult abuse program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in an adult abuse program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from an adult abuse program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under an adult abuse program.
2. The information described in subsection 1 is excepted from the public records disclosure requirements of section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information which relates only to that client or the client's dependents;

- b. The agent, employee, or volunteer operating an adult abuse program determines the disclosure of the information necessary for the efficient and safe operation of an adult abuse program; or for the protection of the safety of an employee, agent, volunteer, or client of an adult abuse program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure; or
 - d. An agent, employee, or volunteer working with an adult abuse program has knowledge or reasonable cause to suspect a child has been abused or neglected as is defined by section 50-25.1-02.
3. Any person who violates this section is guilty of an infraction.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 30, 1985

CHAPTER 196

HOUSE BILL NO. 1509
(Conmy)

PARENTAL DUTY TO SUPPORT CHILDREN

AN ACT to amend and reenact section 14-09-08 of the North Dakota Century Code, relating to the mutual duty to support children.

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

SECTION 1. AMENDMENT. Section 14-09-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-08. Mutual duty to support children. ~~The parent entitled to the custody of a child must give the child~~ Parents must give their children support and education suitable to the child's circumstances. ~~If the support and education which the custodial parent of a legitimate child is able to give are inadequate, the other parent must assist the custodial parent to the extent of his or her ability.~~

Approved March 27, 1985

CHAPTER 197

HOUSE BILL NO. 1195
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

CHILD SUPPORT ENFORCEMENT AGENCY NOTIFICATION

AN ACT to create and enact two new sections to chapter 14-09 of the North Dakota Century Code, relating to enforcement of child support orders; to amend and reenact subsection 2 of section 14-08-07 and subsections 1, 2, and 3 of section 14-09-09.1 of the North Dakota Century Code, relating to the procedure for an action for support and transcription of child support orders, and to wage assignments for child support.

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

SECTION 1. AMENDMENT. Subsection 2 of section 14-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. if the recipient is not or ceases to be a resident of the county in which the action was venued, the The court of its own motion or on motion of the state's attorney of either the county of venue or, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the recipient or the obligor may reside from time to time. Thereafter, the provisions of this section shall apply as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Out-of-state wage withholding orders - Filing requirements. A copy of an order for the withholding of income or wages to satisfy a child support obligation issued by a state other than this state or by a court of the United States may be filed in the office of the

clerk of any district court of any county in this state upon all of the following conditions:

1. The order is authenticated in accordance with the statutes of this state.
2. The obligor under the order resides or is employed in the county of filing.
3. The person or agency seeking to file the order establishes by affidavit that the child support obligation is in arrears at least twenty days.
4. A copy of the order and accompanying documents have been sent to the child support enforcement unit of the department of human services.

SECTION 3. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Effect of filing out-of-state wage withholding order. Upon the filing of the order described in section 2 of this Act, the clerk of court shall treat the order in the same manner as a child support wage assignment order of a district court under section 14-09-09.1.

SECTION 4. AMENDMENT. Subsections 1, 2, and 3 of section 14-09-09.1 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Each judgment containing child support provisions and each order for child support issued by a district court of this state shall include an order directing the obligor to assign such salary currently due or to be due in the future from the obligor's employer or successor employers to the clerk of the court where the judgment is granted or the order issued, in such amount as will be sufficient to meet the child support payments imposed by the court. The order must include a sum to be applied toward the satisfaction of any support arrearages. This wage assignment shall take effect upon application of the person receiving payments or any person or public agency designated to receive such payments, when the requirements of this section have been met. The application shall be a sworn statement which states that the obligor has failed the obligor's failure to make a child support payment in full within twenty days of the due date of such payment. This section does not authorize a clerk of court who receives child support payments as trustee under section 14-08-07 to make such application.
2. The clerk of court, upon application of an authorized person or agency, shall send a notice by certified first-class mail to the last known address of any obligor

who has failed to make the required child support payment within twenty days of its due date. The notice shall be postmarked no later than ten days after the date on which the application was filed and shall inform the obligor of the amount of money that will be withheld from wages and that the wage assignment shall go into effect ten days after the date on which the notice was sent. The obligor may, within that ten-day period, request a hearing on the issue of whether the wage assignment should take effect is based upon a mistake of fact, in which case the wage assignment shall be held in abeyance pending the outcome of the hearing. The district court or its referee shall hold a hearing requested under this section within ten working days after the date of the request.

3. If at the hearing the obligor establishes that extraordinary circumstances prevented fulfillment of the child support obligation and that such circumstances are beyond the control of the obligor, the court may direct that the wage assignment be delayed until such time, within twelve months, as another month's payment is missed. If such a delay is granted, the wage assignment shall, upon application, go into effect if, within the following twelve months, the obligor fails to make in full any payment within twenty days of its due date there has been a mistake in the identity of the obligor or an overstatement of the amount of support stated to be owed by the obligor, the court may order that no wage assignment take effect. In the absence of a showing by the obligor that there has been a mistake of fact, the court shall order that the wage withholding proceed.

Approved March 31, 1985

CHAPTER 198

HOUSE BILL NO. 1221
(Unhjem)

OUT-OF-STATE ADOPTION AGENCIES AND ADOPTEE INSURANCE

AN ACT to permit that an adoption petitioner may be required to show proof of health insurance covering the person to be adopted; and to create and enact a new section to chapter 50-12 of the North Dakota Century Code, relating to license requirements for out-of-state child-placing agencies.

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

SECTION 1. Health insurance requirements for adoptees. The department of human services, county social service board, or child-placing agency involved in an adoption proceeding may at any time prior to a final decree of adoption, if legal custody of the person to be adopted is not held by the department, a county social service board, a child-placing agency, or equivalent office or agency outside the state, require the petitioner for the adoption of another person to show proof that a health insurance policy is in effect which provides coverage for the person to be adopted. If proof of health insurance coverage is submitted by the petitioner, no further bond of any kind may be required by the department or a county social service board in regard to health coverage of the person to be adopted.

SECTION 2. A new section to chapter 50-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Out-of-state child-placing agency license requirements.

1. Except as otherwise provided in this section, a child-placing agency that does not maintain an office in this state may apply for and receive a license under the same terms and conditions as a resident child-placing agency.
2. A child-placing agency that does not maintain an office in this state must name on its license application at least one resident child-placing agency. Resident child-placing

agencies named on the application must certify their willingness to:

- a. Receive service of process for papers to be served on the out-of-state child-placing agency;
 - b. Assist when requested by the department of human services in the supervision and visitation of children placed in either temporary or permanent homes by the out-of-state child-placing agency; and
 - c. Provide at the request of the department of human services all other facts, information, and reports to be made on behalf of the out-of-state child-placing agency.
3. An out-of-state child-placing agency that complies with the licensing requirements of this chapter may not be required to maintain an office in this state.

Approved March 29, 1985

EDUCATION

CHAPTER 199

SENATE BILL NO. 2508
(Senator Heigaard)

(Approved by the Committee on Delayed Bills)

UNIVERSITY AND SCHOOL LANDS TRUST AGRICULTURAL LOANS

AN ACT to amend and reenact section 15-03-05 of the North Dakota Century Code, relating to agricultural loans made from university and school lands permanent trust funds.

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

SECTION 1. AMENDMENT. Section 15-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-05. ~~One-third~~ One-half of permanent funds to be invested in farm loans - Exception. At least ~~one-third~~ one-half of the whole amount of the several permanent funds, as computed by the commissioner of university and school lands at the end of each fiscal year, shall be invested in first mortgages on farmlands and rangelands in this state if there is a sufficient demand for investment in farm loans. First mortgage loans on farmlands and rangelands shall be made only in accordance with the provisions of this chapter.

Approved April 4, 1985

CHAPTER 200

SENATE BILL NO. 2379
(Olson)REDEMPTION AFTER FORECLOSURE BY STATE ON
FARM LOAN

AN ACT to amend and reenact section 15-03-13 of the North Dakota Century Code, relating to the redemption after foreclosure of a mortgage given as consideration for a farm real estate loan made from the loan pool account of the board of university and school lands.

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

SECTION 1. AMENDMENT. Section 15-03-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-13. Redemption after foreclosure. When a mortgage acquired under the provisions of this chapter has been foreclosed, the mortgagor or a redemptioner may redeem the property from the purchaser within one year after the sale, in the following manner:

1. By paying the purchaser the amount of his purchase with five percent interest thereon interest at the rate provided in the mortgage;
2. By paying the amount of any assessment and taxes insurance premiums, assessments, taxes, utilities, or other items which the purchaser has paid thereon after the purchase, and the interest thereon at the same rate; and
3. If the purchaser is also a creditor having a lien prior to that of the redemptioner, other than the mortgage under which the purchase was made, by paying the amount of the lien with interest.

Approved March 30, 1985

CHAPTER 201

SENATE BILL NO. 2135
(Committee on Education)
(At the request of the Board of Higher Education)

HIGHER EDUCATION REVENUE BONDS

AN ACT to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds for the construction of revenue-producing student housing at the university of North Dakota, a revenue-producing parking lot at the university of North Dakota, a revenue-producing student housing facility at North Dakota state university, a revenue-producing addition to the student center at Mayville state college, a revenue-producing student housing at Minot state college, a revenue-producing addition to the student center at North Dakota state university, and a revenue-producing addition to the auxiliary services building at North Dakota state university; to provide a statement of legislative intent governing issuance of bonds under this Act; to provide an appropriation; and to declare an emergency.

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

SECTION 1. Board of higher education - Bond issuance - Purposes. 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 two million five hundred thousand dollars for the purpose of constructing a revenue-producing student housing facility at the university of North Dakota. Bonds issued under the provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 2. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 1, 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 the equipment of the facility authorized in section 1. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 3. Board of higher education - Bond issuance - Purposes. 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 five hundred thousand dollars for the purpose of constructing a revenue-producing parking lot at the university of North Dakota. Bonds issued under the provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 4. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 3, 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 the equipment of the facility authorized in section 3. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 5. Board of higher education - Bond issuance - Purposes. 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 three million dollars for the purpose of constructing a revenue-producing student housing facility at the North Dakota state university. Bonds issued under the provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 6. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 5, 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 the equipment of the facility authorized in section 5. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 7. Board of higher education - Bond issuance - Purposes. 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 one million four hundred thousand dollars for the purpose of constructing a revenue-producing addition to the student center at Mayville state college. Bonds issued under the provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 8. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 7, 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 the equipment of the facility authorized in section 7. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 9. Board of higher education - Bond issuance - Purposes. 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 two million dollars for the purpose of constructing a revenue-producing student housing facility at Minot state college. Bonds issued under the

provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 10. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 9, 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 the equipment of the facility authorized in section 9. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 11. Board of higher education - Bond issuance - Purposes. 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 two million five hundred thousand dollars for the purpose of constructing a revenue-producing addition to the student center at North Dakota state university. Bonds issued under the provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 12. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 11, 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 the equipment of the facility authorized in section 11. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 13. Board of higher education - Bond issuance - Purposes. 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 two hundred fifty thousand dollars for the purpose of constructing a revenue-producing addition to the auxiliary services building at North Dakota state university. Bonds issued under the provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 14. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 13, 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 the equipment of the facility authorized in section 13. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 15. LEGISLATIVE INTENT. It is the intention of the legislative assembly that the state board of higher education, prior to issuing any bonds under authority of this Act, consider all of the following:

1. Enrollment projections for the institution.

2. The financial feasibility of the project for which the bonds would be issued, including the present and future ability of the project to fully pay the principal and interest on the bonds.
3. The probability of future legislative action which may affect payment of principal and interest on the bonds.
4. Any other relevant matters of which the board has knowledge.

SECTION 16. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 202

SENATE BILL NO. 2308
(Senators Nething, Heigaard)
(Representatives Strinden, Mertens)

UND EDUCATIONAL AND AIRPORT FACILITIES BONDS

AN ACT to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds for the purpose of constructing, improving, or refinancing debt incurred in connection with the revenue-producing educational and airport facilities at the university of North Dakota; and to provide an appropriation.

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

SECTION 1. Board of higher education - Issuance of bonds authorized - Purposes. The state board of higher education may, in accordance with chapter 15-55, issue and sell self-liquidating, tax-exempt bonds in any amount up to but not exceeding ten million dollars for the purpose of constructing an educational facility consisting of housing and related facilities for a management training school for the federal aviation administration and one million dollars for the purpose of refinancing debt incurred in the improvement of the revenue-producing airport facility which is part of the center for aerospace sciences at the university of North Dakota. Bonds issued under the provisions of this section are not a general obligation of the state of North Dakota.

SECTION 2. APPROPRIATION. There is hereby appropriated out of the proceeds from the sale of any bonds issued pursuant to section 1 of this Act, the sum of \$11,000,000, or so much thereof as may be necessary, plus any funds received from federal or private sources by the center for aerospace sciences at the university of North Dakota, to the state board of higher education for the construction, improvement, and refinancing of debt incurred in connection with the facilities described in section 1 of this Act. Any unexpended balances received from the sale of bonds authorized by section 1 of this Act must be placed in sinking funds for the retirement of the authorized bonds.

Approved March 28, 1985

CHAPTER 203

SENATE BILL NO. 2138
(Committee on Political Subdivisions)
(At the request of the State Board of Higher Education)

OLD DICKINSON EXPERIMENT STATION LAND
TRANSFER

AN ACT to require the state board of higher education to transfer the state addition of the city of Dickinson, North Dakota, to the board of university and school lands and to require that any proceeds from sales or other disposition of state addition property be deposited in the common schools trust fund to the extent of the principal and interest owed by the state board of higher education, and any remaining amounts be deposited in the general fund; to amend and reenact section 6 of chapter 208 of the 1979 Session Laws of North Dakota as amended by section 1 of chapter 88 of the 1983 Session Laws of North Dakota authorizing the board of university and school lands to sell state addition; to repeal chapter 151 of the 1977 Session Laws of North Dakota, sections 1, 2, 3, 4, 5, and 7 of chapter 208 of the 1979 Session Laws of North Dakota, section 1 of chapter 175 of the 1981 Session Laws of North Dakota, and section 2 of chapter 4 of the 1983 Session Laws of North Dakota; to provide an appropriation; and to declare an emergency.

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

SECTION 1. The state board of higher education shall transfer to the board of university and school lands the old Dickinson experiment station which is now known as state addition to the city of Dickinson. The board of university and school lands shall exercise control over state addition and shall be substituted for the state board of higher education on all contracts regarding the state addition. Upon payment of the principal and interest owed to it by the state board of higher education, the board of university and school lands shall release its security interest in the previously purchased working ranch unit and shall release and satisfy all mortgages and notes owed to it by the state board of higher education. Upon transfer of the state addition, the board of university and school lands shall assume all other existing obligations on the state addition. Notwithstanding any other provision of law, the board of university and school lands is authorized to lease to the Dickinson experiment station for grazing

or haying purposes any or all of the state addition on terms mutually agreed to with the board of higher education. Any rents or profits or proceeds from the sale or other disposition of the property described in this section shall be used first to pay the expenses of any sale or disposition of the property and then to be deposited in the common schools trust fund to make principal and interest payments on such amounts as are owed to the board of university and school lands by the state board of higher education. Upon payment of the total principal and interest on moneys borrowed by the state board of higher education, any additional rents, profits, or proceeds as may be received shall be deposited in the general fund.

SECTION 2. AMENDMENT. Section 6 of chapter 208 of the 1979 Session Laws of North Dakota as amended by section 1 of chapter 88 of the 1983 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 6.) Upon ~~full~~ the transfer of the Dickinson experimental livestock research program to the working ranch unit property as described in section 1 of this Act, the state board of higher education shall ~~university and school lands may sell the following property used by the Dickinson experiment station and comprising approximately five hundred forty-four acres-~~

- 1- That portion of land owned by the board in the northeast quarter of section five, township one hundred thirty-nine north, range ninety-six west-
- 2- That portion of land owned by the board in the southwest quarter of section five, township one hundred thirty-nine north, range ninety-six west-
- 3- That portion of land owned by the board in the southwest quarter, the south half of the northwest quarter, and lots three and four, all of section five, township one hundred thirty-nine north, range ninety-six west.

Notwithstanding the provisions of sections 54-01-05.2 ~~or~~, 54-01-05.5, and chapter 15-07, the land shall ~~may~~ be conveyed for the terms and under the conditions necessary to obtain the best possible return to the state of North Dakota upon such terms as the state board of higher education ~~university and school lands shall prescribe. The state board of higher education may not convey any land described in this section for agricultural purposes. Notwithstanding other provisions of state law and local ordinances, the board, after consultation with the Dickinson planning and zoning commission and Stark County planning and zoning commission, may subdivide the land, and dedicate streets, alleys, and other lands for public use, install water, sewer, curb, gutter, other utilities, and streets for the purpose of achieving the best possible return to the state of North Dakota-~~

SECTION 3. INTENT. It is the intent of the legislative assembly that the working ranch unit continue to be used as the Dickinson experiment station.

SECTION 4. REPEAL. Chapter 151 of the 1977 Session Laws of North Dakota, sections 1, 2, 3, 4, 5, and 7 of chapter 208 of the 1979 Session Laws of North Dakota, section 1 of chapter 175 of the 1981 Session Laws of North Dakota, and section 2 of chapter 4 of the 1983 Session Laws of North Dakota are hereby repealed.

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 \$644,284, or so much thereof as may be necessary, to the board of university and school lands for the purpose of paying the city of Dickinson for special assessments due on March 1, 1985, and March 1, 1986, and interest on the special assessments.

SECTION 6. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 204

SENATE BILL NO. 2157
(Committee on Education)
(At the request of the Board of Higher Education)

JUNIOR COLLEGE TEACHER RETIREMENT MEMBERSHIP

AN ACT to create and enact a new subdivision to subsection 13 of section 15-10-17 of the North Dakota Century Code, relating to certain college teachers under the teachers' fund for retirement; and to declare an emergency.

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

SECTION 1. A new subdivision to subsection 13 of section 15-10-17 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Employees of Bismarck junior college and Lake Region community college coming under the jurisdiction of the board who are members of the teachers' fund for retirement may elect prior to July 1, 1985, to continue membership in the teachers' fund for retirement in lieu of the alternate retirement program. If an employee does not elect to continue membership in the teachers' fund for retirement, membership in that fund will terminate and the employee will become a member of the alternate retirement program established by the board effective July 1, 1985. An employee of the above-named colleges who becomes a member of the alternate retirement program may elect prior to July 1, 1985, to have the employee's assessments and employer's contributions in the teachers' fund for retirement with interest transferred by the board of trustees of the teachers' fund for retirement to the employee's account in the alternate retirement program. If an employee elects to transfer the employee's assessment and employer's contributions together with interest to the alternate retirement program, the employee relinquishes all rights the employee or the employee's beneficiary may have to benefits provided in chapters 15-39, 15-39.1, and 15-39.2.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 205

SENATE BILL NO. 2156
(Committee on Education)
(At the request of the Board of Higher Education)

BOARD OF HIGHER EDUCATION EARLY RETIREMENT

AN ACT to create and enact a new subsection to section 15-10-17 of the North Dakota Century Code, relating to early retirement of faculty and officers of the board of higher education; and to amend and reenact subsection 1 of section 54-14-04.3 and section 54-52.1-03 of the North Dakota Century Code, relating to severance pay and contributions to the uniform group insurance program.

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

SECTION 1. A new subsection to section 15-10-17 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To establish by rule an early retirement program for faculty and officers of the board as defined by the board. The limitations on severance pay pursuant to section 54-14-04.3 and on requiring the employee to pay contributions to continue on the state uniform group insurance program upon retirement or upon termination of employment pursuant to section 54-52.1-03 shall not apply to the early retirement program.

SECTION 2. AMENDMENT. Subsection 1 of section 54-14-04.3 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For the purposes of this section, "severance pay" means compensation received, upon termination of employment, for reasons primarily beyond the control of the state employee or officer, for the purpose of assuring an employee or officer funds to depend upon while another job is sought. Severance pay does not include payments made to a terminated employee or officer for accrued annual or sick leave, or compensatory leave, where such payments are authorized. ~~Severance pay also does not include payments made to or on behalf of tenured faculty employees at state~~

institutions of higher learning where such payments are made pursuant to an agreed plan of retirement between the tenured faculty employee and the institution and according to the rules of the state board of higher education.

* SECTION 3. AMENDMENT. Section 54-52.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-03. Employee participation in plan - Employee to furnish information - Benefits to continue upon retirement or termination. Any eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department. An eligible employee who requests enrollment shall be enrolled with the board by the employing department within five days after the expiration of the payroll period during which enrollment was requested. The employee's insurance coverage shall become effective on the date of his enrollment. Upon the retirement of an eligible employee who is entitled to a retirement allowance from a department, board, or agency, or upon the termination of employment of an eligible employee not of retirement age who, upon retirement, will receive a deferred retirement allowance from a department, board, or agency, such employee may continue as a member of the uniform group under the provisions of this chapter; provided, that except for tenured faculty employees of state institutions of higher learning who have entered into agreed plans of retirement with the institution and subject to the rules of the state board of higher education no state contribution for such employee shall be made, and the employee shall pay the premiums directly to the board. Upon the termination of employment where the employee is not entitled to either retirement benefits or a deferred retirement allowance, such employee shall not continue as a member of the uniform group unless the employee was on the uniform group insurance retiree billings as of July 1, 1974, but may continue on an individual basis with the carrier, with such coverage to be offered at the lowest possible rate, to be determined by the board. Each eligible employee requesting enrollment shall furnish the appropriate person in the employing department, board, or agency with such information and in such form as prescribed by the board to enable the enrollment of himself the employee, or himself employee and his dependents, in the uniform group insurance program created by this chapter. In the event the participating employee is a teacher in a state charitable, penal, or educational institution who receives a salary or wages on a nine-month basis and has signed a contract to teach for the next ensuing school year, the agency shall make arrangements to include such employee in the insurance program on a twelve-month basis and make the contribution authorized by this section for each month of the twelve-month period.

Approved March 22, 1985

* NOTE: Section 54-52.1-03 was also amended by section 1 of House Bill No. 1242, chapter 588.

CHAPTER 206

SENATE BILL NO. 2106
(Peterson)SCHOLARSHIPS FOR INDEPENDENT STUDY
STUDENTS

AN ACT to amend and reenact section 15-19-06 of the North Dakota Century Code, relating to a scholarship fund administered through the state board of public school education for the award of grants to independent study students, and providing a standing and continuing appropriation.

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

SECTION 1. AMENDMENT. Section 15-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-19-06. ~~Special operating fund funds~~ - Deposit of collections - Transfers from general fund appropriations --~~Administrative operational fund~~ - Preparation of budget.

1. A special operating fund for the division of independent study shall be maintained within the state treasury and all income and fees collected by the division of independent study from any source shall be remitted monthly by the director to the state treasurer and credited to such special operating fund. All expenditures from such fund shall be within the limits of legislative appropriations and shall be made upon vouchers, signed and approved by the superintendent of public instruction. Upon approval of such vouchers by the office of the budget, warrant-checks shall be prepared by the office of management and budget. The state treasurer shall make periodic transfers upon order of the director of the office of management and budget from the division of independent study general fund appropriation to such special operating fund whenever its balance falls so low as to require supplementation.
2. The state board of public school education may, if it deems advisable, establish an administrative operational fund, of not to exceed ten thousand dollars, out of the special operating fund for the division of independent study. The administrative operational fund so established

shall be deposited in the Bank of North Dakota and may be drawn upon by the state director of the division of independent study for the payment of necessary expenses in the administration and operation of the division of independent study within the limits and regulations prescribed by the board of public school education. The director shall submit a full, minute, and itemized statement of every expenditure made during the month to the board in accordance with such rules and regulations as the board may prescribe, and thereafter the board may, in its discretion, periodically authorize additional transfers to the administrative operational fund, but the balance in such fund shall never exceed ten thousand dollars, and any unencumbered balance therein at the end of any biennium shall revert to the state treasury. The administrative operational fund may not be used to pay salaries or expenses of the director. The board shall determine the amount of the bond to be posted by the director.

3. The state board of public school education may establish a scholarship fund to provide financial grants to students enrolled in courses offered through the division of independent study. The scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the board or the division of independent study as a gift, devise, or bequest. Any gift, devise, or bequest of property received by the board or division of independent study which is designated by the board and donor for the scholarship fund shall be deposited in the scholarship fund at the Bank of North Dakota. The state director of the division of independent study may draw only on the interest earned by the scholarship fund for the award of scholarships within the limits and rules adopted by the state board of public school education. The interest earned by the scholarship fund is hereby appropriated to the division of independent study.
4. The director shall prepare the budget request of the division of independent study for submission to the office of the budget. The budget request shall be approved by the state board of public school education prior to its submission for consideration by the director of the budget.

Approved March 22, 1985

CHAPTER 207

SENATE BILL NO. 2130
(Committee on Appropriations)
(At the request of the Superintendent of Public Instruction)

REVOLVING PRINTING FUND

AN ACT to establish a revolving printing fund to provide schools instructional materials at cost developed by the superintendent of public instruction; and to provide a continuing appropriation.

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

SECTION 1. REVOLVING PRINTING FUND - APPROPRIATION. All moneys collected by the superintendent of public instruction as payment from schools for instructional materials developed and printed by the superintendent of public instruction shall be paid into the revolving printing fund of the state treasury. The instructional materials may be purchased by schools at cost. All moneys deposited to the revolving printing fund are hereby appropriated. If on the first day of July in any year the amount of money in the revolving printing fund is more than fifty thousand dollars, the amount in excess of fifty thousand dollars shall be transferred to the general fund.

Approved April 11, 1985

CHAPTER 208

HOUSE BILL NO. 1545
(Representatives Rydell, Oban, Hill)
(Senator Stenehjem)

CHEMICAL ABUSE PREVENTION IN SCHOOLS

AN ACT to create and enact a new chapter to the North Dakota Century Code, relating to the development of a new program for chemical abuse problems in North Dakota schools; and to provide an appropriation.

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

SECTION 1. Definitions.

1. "Citizens advisory council" means council appointed by the school board.
2. "Consortium" means more than one school district.
3. "Department" means department of public instruction.
4. "Schools" means public and non-public schools with students in any grades, kindergarten through grade twelve.
5. "Superintendent" means superintendent of public instruction.

SECTION 2. Statement of purpose. The purpose of this Act is to provide local communities, through the local school districts, an avenue to develop chemical abuse prevention programs in North Dakota schools. This Act provides responsibility to the state superintendent of public instruction to implement this program and coordinate these efforts with existing state agencies.

SECTION 3. Grants - Design - Coordination. The state superintendent or designated staff must establish guidelines for the school districts to implement a chemical abuse prevention program in North Dakota schools. The guidelines may reflect the following and other criteria as may be appropriate:

1. Community involvement through a citizens advisory committee already in place or appointed by the school board.
2. Assessment of the current level of services and resources available within a community.
3. Assessment of student and staff needs.
4. Coordination of activities with public and private agencies whenever possible.
5. Development of an appropriate plan for implementation based upon assessed needs.
6. Evaluation of programs.
7. The budget to support implementation.

Based upon the criteria developed by the department of public instruction, the superintendent shall review the proposal and grant funds to the school districts.

The school districts may apply for funds independently or form a consortium for a more cost-effective program. The funding will be based upon the criteria and the merit of each program proposal.

The department shall develop a comprehensive plan to address the coordination of services with existing agencies. These agencies may include the department of human services, health department, highway department, and law enforcement agencies. The purpose of coordination is to develop state guidelines and identify resources.

SECTION 4. Staff. The superintendent shall employ one permanent professional staff person for the purpose of coordinating this program. The project coordinator shall:

1. Develop guidelines in consultation with other private and public agencies.
2. Disseminate guidelines to local communities.
3. Provide technical assistance to communities through schools in planning and implementation of a chemical abuse and prevention program.
4. Collect pertinent data for reporting and program evaluation.
5. Facilitate coordination of this program with prevention and educational programs presently being conducted by other state agencies.

6. Provide written evaluation to the superintendent for a report to the state legislature.
7. Serve as a resource specialist to schools in the areas of policy, development, instructional programs, and identifying model programs.

SECTION 5. APPROPRIATION.

1. There is hereby appropriated out of the general fund in the state treasury the sum of \$150,000, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of supporting one full-time position and for the administration of this program for the biennium beginning July 1, 1985, and ending June 30, 1987.
2. There is hereby appropriated \$250,000 out of any state or federal funds which may be made available through grants, gifts, or other sources to the superintendent of public instruction for the purpose of providing chemical abuse services in North Dakota schools for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 16, 1985

CHAPTER 209

SENATE BILL NO. 2065
(Legislative Council)
(Interim Education "B" Committee)

SCHOOL DISTRICT ANNEXATION, REORGANIZATION, AND DISSOLUTION

AN ACT to create and enact chapters 15-27.1, 15-27.2, 15-27.3, and 15-27.4 of the North Dakota Century Code, relating to general provisions and school district annexation, reorganization, and dissolution; to amend and reenact sections 15-28-01, 15-34.2-06.1, 15-47-21, and 57-16-04 of the North Dakota Century Code, relating to school board members, schoolbus service fees, tax levies for equalization between school districts, and excess school district levies; to repeal chapter 15-53.1 of the North Dakota Century Code, relating to school district reorganization, annexation, and dissolution; and to declare an emergency.

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

SECTION 1. Chapter 15-27.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

15-27.1-01. Definitions applicable to chapters 15-27.1 through 15-27.4. In this chapter and chapters 15-27.2, 15-27.3, and 15-27.4 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.

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. 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 chapter and chapters 15-27.2, 15-27.3, and 15-27.4 apply to all school districts in the state, including the board of education of the city of Fargo and the district under its jurisdiction for school purposes.

15-27.1-03. County committee - Appointment - Size and compensation.

1. Each county in this state shall have a county committee formed by the selection of one resident from each of the county commissioner districts within the county. Each member is entitled to receive the actual and necessary expenses incurred in the performance of official duties in the amounts provided by law for state officers and employees. Each member is entitled to receive ten dollars as compensation for each meeting of the committee actually attended by the member. The office of management and budget shall pay by warrant the compensation and expenses as directed by the superintendent of public instruction from moneys appropriated for that purpose.
2. The term of each member is three years, staggered so that one term expires each year. The county superintendent with the approval of the board of county commissioners shall appoint the members of the county committee.

Vacancies shall be filled in the same manner for the unexpired portion of the term. If a member fails, refuses, or is unable to perform the required duties, the county superintendent, upon petition of a majority of the school boards having territory wholly or partially within the district which the member was appointed to represent, shall declare the position of the member vacant, and shall immediately appoint a new member to the committee from that district.

3. If the county is redistricted and as a consequence members of the county committee are placed in the same county commissioner district, a new member must be appointed who is a resident of the new unrepresented district or districts, and as between the members currently serving on the county committee who are residents in the same district, the member whose term expires latest in point of time shall serve. If all the terms shall expire at the same time, the affected members shall decide who shall serve by lot. If the county, through redistricting, thereafter elects its county commissioners at large, members of the county committee must continue to be selected from those commissioner districts established by the districting plan in effect at the time the county is districted at large.

15-27.1-04. County committee - Meetings. The members of the county committee shall select one member as chairman who shall be the presiding officer for one year and until a successor is chosen. The county superintendent is the secretary of the committee, but has no vote. Meetings of the committee must be held upon call of the chairman or a majority of the committee members. The county superintendent is entitled to compensation for actual and necessary expenses incurred while in the performance of required duties. Additional expenses are chargeable and payable as an expense of the county.

15-27.1-05. State's attorney to represent committee. The state's attorney of any county within which a school district is located in whole or in part shall, upon request of the county committee, act as legal advisor of and render written opinions to the committee or its officers. The state's attorney shall also defend the committee or any of its officers in any legal proceedings arising out of the conduct of the business of the committee. If the defense in the proceedings would result in a conflict with the duties of the state's attorney in regard to other public officials or under any law, the board of county commissioners shall employ a special counsel to represent the committee or defend against the proceedings. Compensation of the special counsel, in the amount as may be agreed to by the county commissioners, must be paid out of the county general fund.

15-27.1-06. State board - Powers and duties. The state board shall:

1. Aid county committees in carrying out their powers and duties under this chapter and chapters 15-27.2, 15-27.3, and 15-27.4 by furnishing them, with the assistance of the employed staff of the state committee, with other necessary clerical assistance, and with necessary plans of procedure, standards, data, maps, forms, and other materials and services.
2. Receive, file, and examine plans and data for the reorganization of school districts submitted by county committees, and shall approve such plans and data when they are found by the state board to provide for a satisfactory school district system for the counties and the state and for an equitable adjustment of property, debts, and liabilities. Whenever a plan submitted by a county committee is found by the state board to be unsatisfactory, or whenever the terms of adjustment so submitted are found not to be fair and equitable, the state board shall so notify the county committee and upon request shall assist the county committee in the revision of the plan or terms of adjustment, which revision shall be completed by the county committee and resubmitted within ninety days after such notification.
3. Appoint a county committee, in case no county committee is appointed, as required in section 15-27.1-03, or in case a committee so elected fails or refuses to submit plans, records, reports, and other data as provided for in this chapter.
4. Transmit to the county superintendent of each county affected a copy of the plan for reorganization of school districts approved by the state board; a copy of approved terms of adjustment of property, debts, and liabilities; a statement of the findings and conclusions of the state board respecting such approved plans and terms of adjustment; and copies of maps, reports, records, and all other pertinent material submitted to the state board by the county committee.
5. Establish standards by the adoption of rules to govern the county committees and state board in the development and approval of school district reorganization plans or reorganization, annexation, and dissolution proposals. The standards must require any school district to be formed under any plan or proposal providing for the operation of a high school to have sufficient tax base and fiscal capacity to clearly permit the district to offer the minimum curriculum prescribed by section 15-41-24 taught by teachers possessing the qualifications required by section 15-41-25. Exceptions to the standards may be allowed by a county committee or the state board only in extreme cases where because of sparsity of population or geographical barriers it is impossible to obtain

compliance with them. The county committees or the state board may not approve any reorganization, annexation, or dissolution proposal unless it has logical boundaries following a uniform pattern without undue irregularities.

15-27.1-07. State board - Employees. The superintendent of public instruction shall direct school district annexation, reorganization, and dissolution. The superintendent shall appoint and employ any personnel necessary to enable the state board to carry out the powers and duties imposed upon it by this chapter and chapters 15-27.2, 15-27.3, and 15-27.4 and to fix the compensation for such appointees and employees.

15-27.1-08. County and state officers to cooperate with county committee and state board. The county and state officers shall make available to the county committee and the state board such information from public records in their possession as is essential to the committee and the board in the performance of their duties.

15-27.1-09. Duties imposed upon county superintendent and officers where reorganized districts constitute joint districts. The duties of the county superintendent under the provisions of this chapter or under other provisions of law are imposed upon and required to be performed by all county superintendents affected by annexation, reorganization, or dissolution of school districts involving territory in two or more counties.

15-27.1-10. Transfer of land upon annexation or reorganization. The legal title to all land owned by an original school district which has been annexed to another district or included in a reorganized district which is not subject to a possibility of reverter or right of reentry if title is held by other than the original district, vests in the school board of the reorganized school district or the district to which the property is annexed upon approval of the reorganization proposal by the electors or upon orders of the county superintendent of schools or the reorganization committee, as the case may be. If the reorganized district or district to which the property is annexed includes less than the whole of the former district, legal title to the land of the former district vests in the school board of the district in which the land is situated after reorganization or chapter 15-27.2 annexation. A certificate prepared by the county superintendent of schools of the county wherein the land in question is located, stating the legal description of the land involved, and the fact that the school district formerly owning the land has become either annexed, attached, or reorganized with another school district, may be recorded in the office of the register of deeds of the county in which the land is located.

SECTION 2. Chapter 15-27.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

15-27.2-01. Annexation of contiguous territory to school district - Petition. Territory contiguous to a public school district, whether in the same county or in another, may be annexed to the school district by the county committee after a public hearing upon written petition signed by two-thirds of the qualified electors in the contiguous territory. The county committee shall determine the sufficiency of the petition and the required number of electors necessary to constitute a two-thirds majority.

15-27.2-02. Restricted changes in boundaries - Petition - Requirements. A resident or residents of a school district may request annexation of the property upon which his or their residence is situated to an adjacent school district by a petition for an exchange of property between the district of residence and the adjacent district under the following conditions:

1. The signer of the petition must reside upon the property which is requested to be annexed to the adjacent district.
2. There is an agreement for the exchange of property between the petitioners and the owner of the property in the adjacent district which property is to be exchanged for the property of the petitioner and the owner of the property in the adjoining district need not reside on the property exchanged in order to enter into the agreement.
3. The school boards of the districts involved approve the exchange of property.
4. The difference in taxable valuation of the property involved in the exchange does not exceed one thousand dollars.

Except as provided in this section, the proceedings in this section are subject to the other provisions of this chapter applicable to annexation proceedings generally. Approval of the annexation petition by the county committee and the state board must contain a finding that the requirements in this section have been met.

15-27.2-03. Proposed annexations involving ten percent or more of a school district's taxable valuation.

1. If a county committee receives an annexation petition made under section 15-27.2-01 which involves the transfer of territory accounting for ten percent or more of a school district's taxable valuation, the county committee shall submit the petition directly to the state board without first taking action on the petition. The state board shall make the sole determination of whether the proposed annexation described in the petition would cause the district which would lose the territory to be unable to levy sufficient taxes to carry on normal school operations.

2. In determining whether a school district would be unable to levy sufficient taxes to carry on normal school operations, the state board shall consider the quality and types of programs that are being offered by the school district which would lose ten percent or more of its valuation under the proposed annexation.
3. If the state board determines that the proposed annexation would cause the district losing the territory to be unable to levy sufficient taxes to carry on normal school operations, the board shall find that the annexation petition made under section 15-27.2-01 is a proposed dissolution of the school district.
4. Upon finding that the annexation petition is a proposal for dissolution of the district, the state board shall return the petition to the county committee with the directive that the county committee consider the petition under chapter 15-27.4.
5. Once the state board has made the finding that such a petition is a proposed dissolution of the school district, annexation proceedings may not be applied by the county committee to that petition.
6. If the state board determines that the proposed annexation would not cause the district losing the territory to be unable to levy sufficient taxes to carry on normal school operations, the board shall find that the petition made under section 15-27.2-01 is a proposed annexation.
7. Upon finding that the petition is a proposal for annexation of the involved territory, the state board shall return the petition to the county committee with the directive that the county committee consider the petition under this chapter.
8. The determination of the state board made pursuant to this section is not subject to chapter 28-32.

15-27.2-04. Annexation hearings - Equalization - Notice of hearings.

1. Before detaching territory from one school district or annexing territory to another school district, the county committee shall hold a hearing on the annexation.
2. At least fourteen days prior to the time the hearing is to be held, the committee shall cause notice of such hearing to be published in the official newspaper of the county in which the school district is located, or if no newspaper is published in the county, the notice shall be published in a newspaper in an adjoining county in this state.

3. At such hearing the committee shall consider testimony and documentary evidence with respect to any of the following factors:
- a. The value and amount of all school property and all bonded and other indebtedness of each school district affected by a change in boundaries.
 - b. The amount of all outstanding indebtedness of each district and that which would constitute an equitable adjustment of all property, assets, debts, and liabilities among the districts involved.
 - c. The taxable valuation of existing districts and the differences in such valuation which would accrue under the proposed annexation.
 - d. The size, geographical features, and boundaries of the districts.
 - e. The number of pupils attending school and the population of the districts.
 - f. The location and condition of the districts' school buildings and their accessibility to affected pupils.
 - g. The location and condition of roads, highways, and natural barriers within the respective districts.
 - h. The school centers where children residing in the districts attend high school.
 - i. Conditions affecting the welfare of the pupils in the land area the subject of the annexation petition.
 - j. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts.
 - k. The educational needs of local communities in the involved districts.
 - l. An objective in economizing in the use of transportation and administrative services.
 - m. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts.
 - n. A reduction in disparities in per-pupil valuation between school districts and the objective of equalization of educational opportunities for pupils.

- o. Any other relevant factors which, in the judgment of the committee, are of importance.
4. Following the committee's consideration of testimony and documentary evidence with respect to any of the factors listed in subsection 3, the committee shall make specific findings with reference to every one of those factors to which testimony or documentary evidence was directed.
 5. All proposed annexations must be given final approval by the state board following a hearing conducted by the board at which testimony and documentary evidence shall be considered with respect to any of the factors listed in subsection 3. The state board shall make specific findings with reference to every one of those factors to which testimony or documentary evidence was directed.
 6. 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.
 7. If the school districts involved in the proposed annexation are situated in more than one county, the county committee of the county encompassing the major portion of each school district shall consider and jointly effect the annexation if a majority of the members of each of such county committees approves the annexation. If the annexation is approved by a majority of the members of one of the two county committees, the county superintendent of the county in which the annexing district is located shall submit the annexation to the state board for approval or disapproval, and in such instance approval of the annexation shall have the same effect as approval by all county committees.
 8. Whenever a petition for annexation has failed to be approved by any county committee, a petition involving any of the same area may not be submitted for a period of three months and such petition may not be submitted more than twice in twelve consecutive months.
 9. Whenever a petition for annexation has failed to be approved by the state board, a petition involving any of the same area may not be submitted for a period of three months and such petition may not be submitted more than twice in twelve consecutive months.
 10. If the school districts are situated in more than one county but the major portions of both such school districts are situated in the same county, the county committee of such county shall consider the matter.

11. Any determination made by a single county committee with respect to an annexation proposed under this section may be appealed to the state board. A decision of the state board with respect to a proposed annexation may in turn be appealed to the district court of the judicial district in which the territory proposed is located in accordance with chapter 28-32.

15-27.2-05. Effective date of attachment or detachment - Equalization - Voting places. If territory is annexed to a school district or detached from it, under this chapter, the change in boundaries becomes effective the next July first after the final approval by the state board unless another effective date is provided for by the county committee or in the petition, and all the assets and liabilities of the district involved shall be equalized at the time the annexation petition is approved by the county reorganization committee. If territory is attached to an existing school district, the electors in the attached territory shall vote on school matters at the nearest polling place in the district to which it is attached. Prior to the completion of the annexation of any school district under this chapter, the existing school board of any school district may not contract or place the district under any obligation, except upon the recommendation of the county committee.

SECTION 3. Chapter 15-27.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

15-27.3-01. Comprehensive study by county committee - Considerations - Reorganization plan submitted to state board.

1. The county committee shall make a comprehensive study of:
 - a. The taxable valuation of existing districts and the differences in such valuation under possible reorganization plans.
 - b. The size, geographical features, and boundaries of the districts.
 - c. The number of pupils attending school and the population of the districts.
 - d. The location and condition of school buildings and their accessibility to the pupils.
 - e. The location and condition of roads, highways, and natural barriers within the districts.
 - f. The school centers where children residing in the districts attend high school.
 - g. Conditions affecting the welfare of the teachers and pupils.

- h. The boundaries of other governmental units and the location of private organizations.

The committee shall also give due consideration in the preparation of a plan for the reorganization of school districts to the educational needs of local communities; to economies in transportation and administration; to the future use of existing satisfactory school buildings, sites, and playfields; to a reduction in disparities in per-pupil valuation among school districts; to the equalization of the educational opportunities of pupils; and to any other relevant matters which in its judgment are of importance.

2. The county committee shall prepare and submit to the state board a comprehensive plan for the reorganization of school districts within the county. The plan shall be accompanied by:

a. A description of and a map showing the boundaries proposed under any existing plan for the reorganization of school districts, prepared and submitted in compliance with the provisions of this chapter.

b. Recommendations respecting the location of schools, the utilization of existing buildings, the construction of new buildings, including dormitories, and the transportation requirements under the proposed plan for the reorganization of school districts. The recommendations are not binding upon the proposed school district except as otherwise provided by law.

c. A summary of the reasons for the proposed reorganization of school districts.

d. Recommendations specifying whether the reorganized districts shall have five-member, seven-member, or nine-member school boards, and whether the members shall be elected at large or from designated geographic districts.

e. Any other reports, records, and materials as the state board may require.

15-27.3-02. Proposal involving territory in more than one county. If the school districts involved in a reorganization proposal are situated in more than one county, a special committee composed of not fewer than three members of the county encompassing the major portion of each school district shall prepare a proposal for the reorganization of the school districts. 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 one of the two 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 the reorganization proposal fails to receive the approval of any county committee, 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 both such school districts are situated in the same county, the county committee of that county shall consider the matter.

15-27.3-03. Completed proposals for district or districts may be submitted prior to comprehensive county plan. The county committees, from time to time, may submit to the state board a proposal for the reorganization of one or more districts without awaiting the completion of a comprehensive plan; provided, however, that the proposal fits into and becomes an integral part of a comprehensive plan which the county committee is required to prepare.

15-27.3-04. Determination and adjustment of property, assets, debts, and liabilities among districts. The county committee shall determine the value and amount of all school property and all bonded and other indebtedness of each school district affected in a reorganization proposal, and shall consider the amount of all outstanding indebtedness and make an equitable adjustment of all property, assets, debts, and liabilities among the districts involved after the hearing provided for in section 15-27.3-05.

15-27.3-05. Public hearing on proposals for reorganization - Hearing testimony for adjusting. The county committee shall hold a public hearing on the advisability of any proposal by the committee for the reorganization of school districts. Notice of hearings must be given by publishing a notice in the official county newspaper at least fourteen days prior to the date of each hearing. If the county committee fails to call a hearing or to give the required public notice, a petition signed by twenty-five percent of the qualified electors in the area proposed to be included in the new school district and presented to the committee makes it mandatory for a hearing to be called. Notice of the hearing must be published within ten days after the petition has been filed, and must set forth the date selected for the hearing, which may not be more than twenty days after the date of publication. The county committee shall also hear at such time as may be fixed by it, testimony offered by any person or school district interested in any reorganization proposal of the county committee. The testimony and documentary evidence considered by the county committee must include any information regarding the following factors:

1. The value and amount of all school property of whatever nature involved in the proposed action.

2. The nature, amount, and value of all bonded, warrant, and other indebtedness of each school district affected by the proposed action, including all unexecuted obligations with separate consideration given to the amount of outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements, and the location of such improvements in order that an equitable adjustment of all property, debts, and liabilities among the districts involved be made.
3. The taxable valuation of the existing districts and the differences in such valuation which would accrue under a proposed reorganization.
4. The size, geographical features, and boundaries of the districts.
5. The number of pupils attending school and the population of the districts.
6. The location and condition of the districts' school buildings and their accessibility to affected pupils.
7. The location and condition of roads, highways, and natural barriers within the respective districts.
8. The school centers where children residing in the districts attend high school.
9. Conditions affecting the welfare of the teachers and pupils of the involved districts.
10. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts.
11. The educational needs of local communities in the involved districts.
12. An objective in economizing in the use of transportation and administrative services.
13. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts.
14. A reduction in disparities in per-pupil valuation between school districts and the objective of equalization of educational opportunities for pupils.
15. Any other relevant factors which, in the judgment of the county committee, are of importance.

Following the county committee's consideration of testimony and documentary evidence with respect to the factors listed in subsections 1 through 15, the committee shall make specific findings with reference to those factors to which testimony or documentary evidence was directed in proceedings before the committee.

The county committee 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 the same to the state board at the time of submitting a plan as provided in subsection 2 of section 15-27.3-01. A subcommittee composed of not fewer than three members of a county committee, or three members of the county committee of each county concerned in case territory in two or more counties is involved, may hold any hearing that the county committee is required to hold.

15-27.3-06. Reorganized school districts - Determination of tax levy. Prior to the submission of a reorganization proposal, the county committee or committees shall 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 proposed tax levy must be submitted to the state committee as a part of the reorganization proposal and, if approved by the state committee, must be included as a part of the proposal and submitted to the electors of the proposed new district as provided in this chapter. Tax levies submitted as a part of a reorganization proposal which is approved as provided in this chapter are not subject to mill levy limitations provided by law.

15-27.3-07. Appeal from decision of county committee in making adjustments of property, debts, and liabilities. An appeal may be taken to the district court on any question of adjustment of property, debts, and liabilities among the districts involved in which the power to make an adjustment or adjustments has been extended by this chapter. Any person feeling aggrieved by the decision of the county committee after the hearing provided for in section 15-27.3-05 may appeal from the decision. The appeal must be taken within thirty days after the decision of the committee on the adjustment of the property, debts, and liabilities, by serving a written notice of appeal upon a member of the county committee. If the court finds the terms of the adjustment in question to be not legally or equitably constituted, it shall make an adjustment that is equitable and legal. Any determination by the court with respect to the adjustment of property, debts, and liabilities among the districts or areas involved may not otherwise affect the validity of the reorganization or creation of any district or districts under this chapter.

15-27.3-08. Approved proposal received by county superintendent - Duty of superintendent to call special election - Definition of voting units - Favorable results.

1.
 - a. Upon receipt from the state board of an approved proposal for the reorganization of school districts, and approved terms of adjustment of property, debts, and liabilities among the districts involved, the county superintendent shall call a special election of the voters residing within the territory of the proposed new district.
 - b. The election must be held at the place or places in the territory which have been determined by the county superintendent to be convenient for the voters.
 - c. The special election must be held after July first and no later than December thirty-first of the year in which the approved proposal is received unless there are not sufficient business days left in that year to accomplish the required publication of notice, in which event the special election must be held the following year.
2.
 - a. In holding the election, all existing districts within the proposed new district containing one or more incorporated cities regardless of number or size vote as a single unit, and all existing districts within the proposed new district regardless of number or size which do not contain one or more incorporated cities vote as a single unit.
 - b. For the purposes of this section, all districts containing incorporated cities are considered an incorporated area, and all districts which do not contain at least one incorporated city are considered an unincorporated area.
3.
 - a. Notice of the election, stating the time and place of holding the election, must be published by the county superintendent in the official county newspaper at least fourteen days before the election.
 - b. The election notices shall clearly state that the election has been called for the purpose of affording the voters an opportunity to approve or reject a proposal for the formation of a new school district and must also contain a description of the boundaries of the proposed new district, a statement, if any, of the terms of adjustment of property, debts, and liabilities applicable to the proposal, and the proposed tax levy.
4. The county superintendent shall appoint judges and clerks of the elections and the election shall be held and conducted in the same manner and the polls shall open and close at the same time as specified for elections in public school districts.

5. The result of the elections must be certified and delivered to the county superintendent within three days after the closing of the polls.
6. If a majority of all votes cast by the electors residing within the unincorporated area of a proposed new district and the majority of all votes cast by the electors within the incorporated area of a proposed new district are both in favor of the formation of the district, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the approved proposal and shall organize and establish such districts and in so doing shall perform all other necessary duties that are required by law to be performed by the county superintendent in connection with the organization and establishment of new school districts of any kind or type.

15-27.3-09. Elections for consolidating or reorganizing two or more reorganized school districts. Notwithstanding section 15-27.3-08, whenever reorganization proceedings are had for the purpose of consolidating or otherwise affecting two or more school districts which have previously been reorganized, each of the reorganized school districts votes as a separate unit and the reorganization proceedings may be adopted only upon approval by each voting unit.

15-27.3-10. Transportation required. A reorganization proposal must provide for the transportation of students and must specify if family-type or public schoolbus-type of transportation shall be used, and if the proposal is approved by the voters of the new district, then the school board of the district shall provide adequate and practical transportation of the type specified, except that if family-type transportation is specified, the school board may later substitute public schoolbus-type transportation. A reorganized school district is not bound by the schedule of payments or limitations provided in section 15-34.2-03, and shall establish a schedule of transportation payments as is proper under the circumstances affecting that district, but the newly established schedule of payments may not be less than the amounts specified in section 15-34.2-03 for family-type transportation.

15-27.3-11. Proposal rejection - Revision - New election.

1. If a proposal for the formation of a new school district is rejected by the voters at the election provided for in section 15-27.3-08, the county committee may at any time after three months from the date of such election, and after a public hearing is held in the manner provided in section 15-27.3-05, make such revision as it deems advisable in the boundaries proposed for the new district, in the terms of adjustment of the property, debts, and liabilities of the district, and the proposed tax levy, as

the case may be, and resubmit the same to the state board for approval.

2. a. If the boundaries of the proposed new district, the terms of adjustment, or the proposed mill levy, as the case may be, as revised, are approved by the state board, notice thereof shall be transmitted to the county superintendent, as provided for in section 15-27.1-06.
- b. Upon receipt of such notice the county superintendent shall call, in the manner and for the purpose specified in section 15-27.3-08, a special election of the voters residing within the revised boundaries of the proposed new district.
3. If a majority of all votes cast by the electors residing within the unincorporated area of a proposed new district and a majority of all votes cast by electors within the incorporated area of the proposed new district are both in favor of the formation of the district, the county superintendent shall proceed to organize and establish the district and to perform the necessary duties related thereto in the same manner and to the same effect as is provided in section 15-27.3-08.

15-27.3-12. School boards in reorganized and original districts. After the establishment of any new school district, the school board for the new school district must be elected at the regular annual school district election or at a special election called by the county superintendent of schools for that purpose. The first election to elect a school board in a newly reorganized district is governed by chapter 15-28. Members of school boards elected in the newly reorganized districts may not enter upon the duties of office until the time specified in section 15-27.3-15 except as provided by section 15-27.3-13. School boards in original school districts included within a reorganized district continue and remain in existence until the time specified in section 15-27.3-15 at which time the new school board elected for the newly reorganized district as provided in this section becomes the governing body of such school districts. Prior to the completion of the reorganization of any school district under this chapter, the existing school board of any school district may not contract or place the district under any obligation, except upon the recommendation of the county committee. Subsequent annual elections in the school district are governed by the laws pertaining to such elections.

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.

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 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.

15-27.3-14. Continuance of elementary schools in reorganized districts. Each elementary school included in reorganized school districts must be kept in session as provided by law, except that any school may be discontinued when the school board in the district where the school is located, by a unanimous vote, approves its closing. The school board may reopen such school at any time upon its own motion. The school may be reopened only at the beginning of the next regular school term which follows by at least ninety days the date of the school board's action.

15-27.3-15. Effective date of approved reorganization proposals - Transfer of all property. Except as provided by section 15-27.3-13, any reorganization proposal voted upon and approved becomes operative and effective on the first day of July following its final approval. Any officer of a school district incorporated in whole or in part into a reorganized school district shall within thirty days from the date the reorganization is effective, turn over to the reorganized school district all of the property and other assets as finally adjusted and determined by the county committee. Unless it is otherwise agreed and provided by the reorganization proposal, debts, obligations, and liabilities of the several districts or parts of districts incorporated into the reorganized district become the general debt, obligation, and liability of the reorganized district.

15-27.3-16. Voluntary proposals for the reorganization of school districts. Proposals for the reorganization of school districts must be submitted by the county committee to the state board for final approval:

1. After a hearing on the reorganization proposal is held by the county committee; and
2. For approval before proposals are submitted to a vote of the electors.

Reorganization proposals may be approved by the county committee and approved by the state board, if in the judgment of the county

committee and the state board, the proposals constitute an acceptable part of the comprehensive reorganization plan submitted pursuant to section 15-27.3-01 for the reorganization of the school districts of the county.

15-27.3-17. Sale or removal of school buildings in reorganized districts. On motion of the school board, or on petition of a majority of the qualified electors in an original school district included in a reorganized district established in accordance with this chapter, for the sale or removal of a schoolhouse in such district, the school board of the reorganized district may have the school building moved or sold. If a petition is submitted, the school building must be moved to the place designated in the petition, or sold if the petition so provides. The proceeds of the sale must be placed in either the general fund or the building fund of the reorganized district, in the discretion of the school board. If the sale or removal is to a political subdivision of this state, it may be made for less than the fair market value of the school building upon motion unanimously approved by the school board.

15-27.3-18. Costs of reorganization elections. Each of the districts affected by the proposal shall pay all costs of any election required in school district reorganization proceedings in the same proportion as the amount of each district's territory relates to the amount of territory of the newly proposed school district, should the reorganization proposal fail to be approved at the election. If the reorganization proposal is approved at the election, the newly reorganized school district shall pay all the costs.

15-27.3-19. Changes in reorganization proposal. At any time after the reorganization proposal has become effective, any provision of the reorganization proposal theretofore or thereafter adopted, including provisions affecting the adjustment of assets and liabilities but excepting provisions defining the boundaries of the district, may be changed by a majority vote of the qualified electors without approval of the state board or the county committee. The school board in the reorganized district may, upon its own motion, or shall, upon the filing with it of a petition signed by a number of qualified electors equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year the census was taken, unless the census is greater than four thousand, in which case only fifteen percent of the number of persons enumerated in the school census, is required. However, not fewer than twenty-five signatures of qualified electors is required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the county superintendent for the county in which the school is located shall determine the number of qualified electors in the qualified district. If a majority of all votes cast by the electors residing in each of the geographic areas

is in favor of the proposed change, then the proposed change is effected.

15-27.3-20. Powers of school board in reorganized district - Exceptions. After five years from the effective date of the reorganization proposal, the school board of a reorganized district shall exercise the powers granted to a school board by section 15-29-08 or any other provisions of law regardless of limitations contained in the reorganization proposal. This section does not authorize the school board of a reorganized district to exercise any powers prohibited or limited by sections 15-27.3-10, 15-27.3-17, or 15-27.3-19.

15-27.3-21. Proportionate tax rate on agricultural property. Any school district which imposed a proportionate tax rate for school purposes levied on agricultural property different from the school district levy on other taxable property as permitted by sections 15-53.1-37 and 15-53.1-38, as they existed on December 31, 1984, must continue to levy that proportionate tax rate unless it is discontinued by the school board upon a majority of the voters of the school district. No other school district may impose such a proportionate tax rate for different classes of property within the school district.

SECTION 4. Chapter 15-27.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

15-27.4-01. Dissolution of public school districts - Responsibility of county committee - Duty of county superintendent. The county committee shall forthwith schedule and provide notice of a public hearing to dissolve a school district and attach the territory to other school districts upon the following occurrences:

1. Receipt by the county committee of notice from the county superintendent that:
 - a. A school district can no longer levy sufficient taxes to carry on normal school operations;
 - b. A school district within the county has not operated a school by the thirty-first of December of the year following the calendar year in which such operation ceased, providing fifty percent of the pupils from such school district are not attending schools in another state;
 - c. There exists territory not organized into a school district; or
 - d. Any portion of a school district within the county has been severed from the district by the expansion and growth of a city and the severed portion is not contiguous with the district.

2. Receipt by the county committee from the state board of a returned annexation petition sent back to the county committee pursuant to section 15-27.2-03.
3. When any portion of a school district has been left out of a school district reorganization, the county committee shall, within forty-five days after voter approval of the school district reorganization proposal, order a hearing pursuant to section 15-27.4-02 for the purpose of determining to which school district or districts the remaining territory should be attached.

After approval by the state board of the proposed dissolution, the county committee shall provide for the attachment of the territory of the dissolved district to one or more adjoining school districts effective July first next following the approval unless another effective date is provided for by the county committee. Qualified electors residing in the attached territory are entitled to vote and hold office in the school district to the same extent as all other qualified electors residing in the district, and the territory is part of the school district as fully in every respect as if it had been included in the district when organized. This section does not prevent the district from providing for the education of the children to the extent that its current budget in the judgment of the school board will permit, or relieve the district from any existing responsibility for the education of children attending its schools before the effective date of the order. This section does not change the effect of any election held within the school district pursuant to chapter 15-48 before the effective date of the order.

15-27.4-02. Notice of hearing - Order of attachment - Joint county action.

1. The county superintendent, upon order of the county committee, shall notify the clerk of each school district adjoining any district which is to be dissolved pursuant to section 15-27.4-01, and any unorganized territory recommended for attachment as provided by that section, that a hearing will be held and the time and the place of the hearing by the county committee, for the purpose of determining to which school district or districts the dissolved or unorganized territory will be attached.
2. The county committee shall receive testimony at the hearing for the purpose of determining and considering the factors listed in subsection 3 of section 15-27.2-04 as they relate to the dissolution proceeding.
3. At or after the hearing, the county committee shall by resolution order the district dissolved and its territory attached, or the unorganized territory attached, to one or more adjoining school districts in such manner as will, in its judgment, provide the best educational opportunities

for pupils of the public schools and the wisest use of public funds for the support of the public school system in the school districts and attached territory.

4. The district to be dissolved must be attached to a contiguous operating school district.
5. The order becomes effective July first following the date of the order or resolution and after approval by the state board, unless another effective date is provided for by the county committee, as provided in section 15-27.4-01.
6. If that portion of the order providing for attachment of the dissolved or unorganized territory is rendered ineffective or suspended for any reason, the portion of the order providing for the dissolution is suspended until such time as the attachment becomes effective.
7. If any of the adjoining district is situated wholly or partly in a county other than that which included the district to be dissolved or the unorganized territory affected, any order attaching territory to the adjoining school district becomes effective only upon the adoption of a concurring resolution by the county committee of the other county in which it is situated.
8. If the county committees cannot agree upon an order attaching the territory to adjoining districts, the county superintendent of the county in which the majority of the district being dissolved is located shall submit the dissolution and attachment to the state board, and in such instance the state board shall dissolve and attach the district to be dissolved, or the unorganized territory, in the manner as will, in its judgment, provide the best educational opportunities for pupils of the public school system in the school districts and attached territories.
9. The action of the state board has the same effect as approval by all county committees.

* SECTION 5. AMENDMENT. Section 15-28-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-01. School board members, number, and terms - Elections to be at large - Reorganized districts vote once.

1. Each school board of a public school district in this state shall be composed of five members, unless:
 - a. Such district has increased its membership under the provisions of this section;

* NOTE: Section 15-28-01 was also amended by section 30 of House Bill No. 1059, chapter 235.

- b. Such district has increased its membership under the provisions of any prior law permitting such increase; or
- c. Such district is, at the time of July 1, 1971, operating with a school board composed of a ~~greater or lesser number of members~~ other than five members, in which case the number of members of such board shall remain unchanged unless increased under the provisions of subsection 2.
2. The number of school board members in any public school district may be increased to either five, seven, or nine or decreased to seven or five if a petition signed by at least one-third of the voters of the school district as determined by the number of persons voting at the most recent annual school district election is filed with the school board asking for such change, and the change is approved by a majority of the voters of the district voting at a special election called for that purpose. If approved, the additional members shall be elected to the board at the next annual school district election in the same manner as other school board members. If the total number of board members after the increase is approved is five, two shall serve until the first annual election, two until the second annual election, and one until the third annual election thereafter. If the total number of board members after the increase is approved is seven, three shall serve until the first annual election, two until the second annual election, and two until the third annual election thereafter. If the total number of board members after the increase is approved is nine, three shall serve until the first annual election, three until the second annual election, and three until the third annual election thereafter. All such members shall serve for the terms prescribed above and until their successors are elected and qualified, and the length of the respective terms of those members elected as a result of the increase in membership of the board shall be determined by lot. ~~in no event shall the~~ The length of any term which existed prior to the increase in membership and which is held by a member who has duly qualified, may not be modified by such determination. Terms subsequent to the first shall be for the normal term of three years, and until a successor is elected and qualified. School board members shall be elected at large, except that if the district in which they are elected has been reorganized under the provisions of chapter 15-53 or article III of chapter 15-53-1, such members may be elected either at large or by geographical area. In reorganized districts reorganized under the provisions of chapter 15-53 or article III of chapter 15-53-1, in which an increase in the membership of the board is proposed, the election on the reorganization plan shall take proposal takes the place of the petition and

election requirements of this subsection, and approval of the reorganization ~~plan shall have~~ proposal has the same effect as if the approval were by the election provided for in this subsection. Should a decrease to not less fewer than five members be approved by the voters, the excess number of members will serve out existing terms until the number approved by the voters has been reached.

SECTION 6. AMENDMENT. Section 15-34.2-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-06.1. Charge for bus transportation optional. The school board of any school district which has not been reorganized ~~pursuant to chapter 15-53-1,~~ may charge a fee for schoolbus service provided to anyone riding on buses provided by the school district. For schoolbus service which was started prior to July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the state average cost for transportation or the local school district's cost, whichever is the lesser amount. For schoolbus service started on or after July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the local school district's cost for transportation during the preceding school year. Any districts that have not previously provided transportation for pupils may establish charges based on costs estimated by the school board during the first year that transportation is provided.

SECTION 7. AMENDMENT. Section 15-47-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-21. Tax levies for equalization between school districts limited - Remittance tax. When the amount to be levied on each of several districts or parts of districts affected by a change in school district boundaries has been determined, a list of the several amounts shall be made, and the respective amounts shall be set forth opposite the name of the district to which it is chargeable. The entire levy shall be stated substantially in the form provided for certifying school taxes, shall be addressed to the county auditor, and shall be signed by a majority of the members of the county committee or committees. Opposite the several descriptions of property on the tax list shall be entered the names of the school districts within which the property is situated. The levy shall be a valid levy on the taxable property of each district. Not more than fifteen mills of the levy shall be extended against the taxable property in any one year, and the levy, not exceeding fifteen mills on the dollar, shall be extended from year to year until the whole amount has been levied. The county auditor shall preserve the levies and shall extend the several rates from year to year as required by law for school district taxes, and the tax shall be collected at the same time and in the same manner as other taxes are collected, and paid over to the proper school district within which

the property upon which the tax is paid is situated. The proceeds of taxes upon parts of districts lying outside of the district with which they are equalized shall be paid to the clerk of the school district within which the property is situated. The taxes levied for equalization purposes shall be in addition to all other taxes for school purposes. This section applies to proceedings under ~~article II, annexation, and article IV, involuntary dissolution of chapter 15-53.1 chapters 15-27.2 and 15-27.4, but does not apply to article III, reorganization, of chapter 15-53.1 15-27.3~~ except where specifically so referenced.

* SECTION 8. AMENDMENT. Section 57-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-16-04. Increase may be for five years - Extension - Discontinuance. The governing board of the school district may submit the question of authorizing an excess levy for the current year and not to exceed four succeeding years. The notice of election shall give the year or years for which authorization is sought for an excess levy as well as the percentage of excess which is to be voted upon. Prior to the termination of the excess levy, such levy may be extended for a term not to exceed the original term of the increase upon the unanimous approval by the governing board of the school district, and further extensions may be made for the same number of years prior to each termination date upon the unanimous approval of the governing board of the school district. The question of discontinuing such extended excess levy in any school district shall be submitted to the electorate at the next regular election upon the filing with the school board of a petition containing the signatures of not less than ten percent of the electors of the district as determined by the county superintendent for such county in which such school is located; provided, however, that the approval of discontinuing such extended excess levy shall not affect the tax levy in the calendar year in which the election is held. The election shall be held in the same manner and subject to the same conditions as provided in section ~~15-53.1-22 15-27.3-08~~ for elections for approval of school district reorganization ~~plans proposals~~.

** SECTION 9. REPEAL. Chapter 15-53.1 of the North Dakota Century Code is hereby repealed.

SECTION 10. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 11, 1985

* NOTE: Section 57-16-04 was also amended by section 108 of House Bill No. 1059, chapter 235.

** NOTE: Section 15-53.1-05 was amended by section 35 of House Bill No. 1059, chapter 235; Section 15-53.1-05.2 was amended by section 30 of Senate Bill No. 2086, chapter 82; Section 15-53.1-16 was amended by section 36 of House Bill No. 1059, chapter 235; Section 15-53.1-34 was amended by section 37 of House Bill No. 1059, chapter 235; and Section 15-53.1-39 was amended by section 38 of House Bill No. 1059, chapter 235.

CHAPTER 210

HOUSE BILL NO. 1614
(Representatives Lautenschlager, J. Peterson)
(Seantors Redlin, Reiten)

SCHOOL BOARD ELECTIONS AND TERMS

AN ACT to create and enact a new subsection to section 15-28-01 of the North Dakota Century Code, relating to certain school board elections and terms of office for school board members; and to amend and reenact section 15-28-03 of the North Dakota Century Code, relating to certain school board elections and terms of office for school board members.

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

SECTION 1. A new subsection to section 15-28-01 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

If a school board has elected to convert to four-year terms of office for school board members as provided for in subsection 2 of section 15-28-03 and has also increased the number of board members pursuant to subsection 2 of this section, the board by lot or by some other random selection method shall provide for such a combination of initial terms of office not to exceed four years for the new board members. Such a combination must equalize to the greatest extent feasible the number and length of terms for old and new members to be elected during the next three election years. The members' terms must be staggered and must expire in even-numbered years.

SECTION 2. AMENDMENT. Section 15-28-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-03. Annual and special elections - When held - Officers elected - Terms - Optional joinder with city election or primary election.

1. An annual election shall be held in each public school district on the first or second Tuesday in June, at the discretion of the school board, of each year. At each annual election, members of the school board shall be

elected to fill all vacancies therein caused by the expiration of terms of office or otherwise. Each member elected shall serve for a term of three years, except when elected to serve an unexpired term. Such term shall commence on the second Tuesday in July following his election, and he shall continue until his successor is elected and qualified. In addition to the annual election, a special election may be held at any time if approved by a resolution of the school board. Such election may be held for any purpose provided for by law.

2. The annual election provided for in this section may, upon resolution of the school board, be held in conjunction with the regularly scheduled city election, established by state law or established pursuant to the home rule powers of the city, held in a city located wholly or partially within that school district. The school board may enter into an agreement with the city commission or the city council concerning the sharing of election personnel, the printing of election materials, and the apportioning of election expenses. References in this chapter to the date of school board elections, insofar as they relate to a school board which holds its elections in conjunction with a city, are deemed to mean or to refer to the date of the applicable city election. Such a school board has the further option to convert the terms of office of its members to four years rather than three years in order that school board elections like city elections may be held biennially rather than annually. A school board may convert the future terms of its members to four years by passing a resolution requiring such a conversion. Thereafter, following the expiration of the three-year term of each incumbent in office as of the date of the passage of the resolution, the term of office for that position on the board shall be four years, except that as to any seat where such an extension of the term would result in the four-year term of office ending in an odd-numbered year, for which seat one additional and transitional term of three years shall be provided before the term becomes a four-year term of office. Once the school board has accomplished the transition to biennial elections, references in this chapter to annual elections as they apply to the school board are deemed to mean biennial elections, and the election held pursuant to section 15-28-11 must be held in even-numbered years.
3. If the school election is held in conjunction with the primary election, the school board may enter into an agreement with the governing body of the county or counties in which the district lies concerning use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses.

CHAPTER 211

SENATE BILL NO. 2476
(Olson)

SCHOOL BOARD ELECTION FILING

AN ACT to amend and reenact section 15-28-09 of the North Dakota Century Code, relating to public school district elections.

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

SECTION 1. AMENDMENT. Section 15-28-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-09. Election - Candidates - Ballots - Stickers. Any

1. Except as otherwise provided in subsection 2, any candidate for election as a member of the school board of a school district shall file with the clerk of the board, not less than twenty-five days before the election and before four p.m. on the twenty-fifth day, a statement setting forth the candidate's name and the position for which that person is a candidate. A statement which is mailed to the clerk shall be in the clerk's physical possession before four p.m. on the twenty-fifth day before the election. At least twenty days before the election, the clerk shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all persons who have filed as herein provided. The arrangement of the names of the candidates upon the ballot shall be determined by lot by such clerk in the presence of the candidates or their representatives. The ballot shall be headed "official ballot", shall be nonpartisan in form, and shall contain the following:

- 1- a. The name of the district.
- 2- b. The date of the election.
- 3- c. The number of persons to be elected to each office.

- 4+ d. Blank spaces below the names listed as candidates for each office in which names not stated on the ballot may be written.
2. When a school annual election or special election is held in conjunction with a statewide election, any candidate for election as a member of the school board of a school district shall file with the clerk of the board, not less than fifty-five days before the election and before four p.m. on the fifty-fifth day, a statement setting forth the candidate's name and the position for which that person is a candidate. A statement which is mailed to the clerk shall be in the clerk's physical possession before four p.m. on the fifty-fifth day before the election.
3. Nothing herein shall prevent any person who is qualified to hold the office, who desires to be a candidate at the election, and who has failed to file as herein provided, from providing stickers to be attached to the official ballot by the electors. A sticker shall not be more than one-half inch [12.7 millimeters] in width, and shall have printed thereon the name and address of one person.

Approved March 29, 1985

CHAPTER 212

HOUSE BILL NO. 1253
(Representatives O'Connell, D. Olson, V. Olson)
(Senators Heinrich, Kelly)

SCHOOL BOARD ANNUAL MEETING DATE

AN ACT to amend and reenact section 15-29-02 of the North Dakota Century Code, relating to the time for the annual meeting of school boards.

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

SECTION 1. AMENDMENT. Section 15-29-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-02. Regular and special meetings of board - Notice of special meetings. The annual meeting of the school board shall be held ~~on the second Tuesday in July following the annual election during the month of July following the annual election, on a date called by the president and convenient to the rest of the members, with such notice given as is prescribed in this section for special meetings,~~ at which time the newly elected members shall assume the duties of their offices. The board shall hold a regular meeting for the transaction of business once in each calendar month thereafter; provided, however, that the board of any school district in which are located only one-room or two-room schools may meet as often as the board shall deem necessary, but not less than four times in each year. Special meetings may be called by the president, or by any two members of the board. Written or printed notice of a special meeting shall be given to each member of the board; provided, however, that the attendance at any meeting, without objection, by any member shall constitute a waiver of the notice required to be given to such member.

Approved March 1, 1985

CHAPTER 213

HOUSE BILL NO. 1291
(Representatives O'Connell, Laughlin, Schindler)
(Senators Kelly, Dotzenrod)

COMPENSATION OF SCHOOL BOARD MEMBERS

AN ACT to amend and reenact section 15-29-05 of the North Dakota Century Code, relating to the compensation of school board members.

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

SECTION 1. AMENDMENT. Section 15-29-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-05. Compensation of board members. Each member of the school board may receive not in excess of ~~ten~~ twenty-five dollars as compensation for each meeting of the board actually attended ~~by him~~. In addition thereto, each member may be reimbursed for all necessary meals and lodging and travel expense actually incurred ~~by him~~ while engaged on official business of the board, at the same rate as provided for state officers and employees. Any mileage claimed shall not exceed the number of miles [kilometers] between the points traveled as measured by the most usual route.

Approved March 1, 1985

CHAPTER 214

HOUSE BILL NO. 1257
(Dorso, Wold)SCHOOL TRANSPORTATION AND FUEL
CONTRACTS

AN ACT to create and enact section 15-34.2-07.1 of the North Dakota Century Code, relating to the direct negotiation of school transportation and motor vehicle fuel contracts; and to amend and reenact sections 15-34.2-07, 15-34.2-08, and 15-47-15 of the North Dakota Century Code, relating to school transportation, motor vehicle fuel, and heating fuel contracts.

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

SECTION 1. AMENDMENT. Section 15-34.2-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-07. Vehicular transportation - Bids, contracts, bonds. The school board of any school district which furnishes vehicular transportation to any of its schools, prior to the opening of school each year, shall enter into written contracts for the furnishing of such transportation for the ensuing school year. If the vehicle furnished is privately owned, the owner or lessee of the vehicle and the school board may enter into a contract, which shall not exceed seven years' time. The Except as otherwise provided in section 15-34.2-07.1 the board shall give at least ten days' notice of the time and place of the letting of such contracts and shall call for sealed bids therefor by publication in a newspaper of general circulation within such district. The notices shall describe the route to be covered by each contract and shall state that the board reserves the right to reject any and all bids, that a bond submitted in a separate envelope will be required of each successful bidder in the sum of five hundred dollars or such greater sum as may be set by the board, conditioned for the faithful performance of the duties prescribed by the contract, and that the bids submitted must name the person or persons who will operate the vehicle and describe the nature of the vehicle.

SECTION 2. Section 15-34.2-07.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

15-34.2-07.1. School transportation and fuel contracts - Direct negotiation. Notwithstanding sections 15-34.2-07 and 15-34.2-08, a contract for the transportation of schoolchildren, or a contract for the purchase of fuel for vehicles which was originally bid by and let to a contractor may be renewed by direct negotiation with that contractor provided that two or more written quotations are obtained for the service or fuel when possible, or upon sealed bids. At least thirty days before awarding a directly negotiated contract, the school district shall, by published notice, request quotations for the service or fuel to be provided. All quotations obtained must be kept on file for a period of at least one year after their receipt. If a contract is made by direct negotiation, all quotations must be maintained as public information. If a contract is made upon sealed bids, the procedure for advertising and awarding bids must conform to the provisions of section 15-34.2-07 except as otherwise provided in this section. A directly negotiated contract may only be entered into at a public meeting of the school district board during which meeting the patrons of the school district are given an opportunity to appear and comment. Notice of the school board meeting must be published at least one week prior to the meeting in a legal newspaper of wide circulation within the school district.

SECTION 3. AMENDMENT. Section 15-34.2-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-08. Contract for vehicular transportation - Conditions for granting. The school board shall let the contract, in each case except as otherwise provided in section 15-34.2-07.1, to the lowest responsible bidder who furnishes a bond as described in section 15-34.2-07, which will be approved by the board, and who agrees to use a vehicle which, in the judgment of the board, meets standards imposed by the superintendent of public instruction under sections 39-21-27 and 39-21-27.1, is a safe, comfortable, and suitable vehicle for the purpose, and who names one or more drivers who, in the judgment of the board, are competent and responsible. No contract shall be entered into with any member of the board, but a member of the board may be designated in the contract as the operator of a vehicle.

*** SECTION 4. AMENDMENT.** Section 15-47-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-15. School contracts - Advertisement for bids - Publication - Exceptions - Penalty. No contract involving the expenditure of an aggregate amount greater than ~~four~~ eight thousand dollars, except as hereinafter set forth, shall be entered into by any school district of any kind or class except upon sealed proposals and to the lowest responsible bidder after ten days' notice by at least one publication in a legal newspaper published in the county in which the school district, or a portion thereof, is located. If no newspaper is published in such county, the publication shall be made in a newspaper published in an adjacent county. The provisions of

*** NOTE:** Section 15-47-15 was also amended by section 1 of Senate Bill No. 2261, chapter 228.

this section shall not apply to any of the following classes of contracts:

1. For personal services of employees of the district.
2. For school text or reference books.
3. For any article which is not for sale on the open market.
4. For any patented, copyrighted, or exclusively sold device or feature required to match articles already in use.
5. For any patented, copyrighted, or exclusively sold article of so distinctive a nature that only one make of the article can be purchased.
6. Any building contract.
7. For school transportation services or fuel for vehicles the purchase of which is made by direct negotiation with a contractor in accordance with section 15-34.2-07.1.
8. For heating fuel which is purchased under a directly negotiated contract provided the procedure described in section 15-34.2-07.1 for transportation and vehicle fuel is followed.

Such exceptions shall be strictly construed. Every member of a school board who participates in a violation of this section shall be guilty of a class B misdemeanor.

Approved March 28, 1985

CHAPTER 215

HOUSE BILL NO. 1266
(Hoffner, R. Berg, Sauter, W. Williams)

DISCIPLINE IN ALTERNATIVE EDUCATION

AN ACT to provide disciplinary procedures for students enrolled in approved alternative education programs; to amend and reenact subsection 13 of section 15-29-08 and section 15-40.1-07.2 of the North Dakota Century Code, relating to the discipline of students; and to declare an emergency.

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

SECTION 1. Approved alternative education programs -
Suspension of students.

1. A student enrolled in an approved alternative education program, for which state aid payments must be made as described in section 15-40.1-07.2, may be suspended for not more than twenty days for insubordination, habitual disobedience, or disorderly conduct.
2. The administrator of an approved alternative education program shall give immediate notice of the suspension and the reason for the suspension of a student to the student's parents or guardian.

SECTION 2. Alternative education program - Expulsion of students. A student enrolled in an approved alternative education program may be expelled for a period not to exceed the remainder of the current school term. A student may be expelled if the student is found to be habitually insubordinate or disobedient or if the student habitually displays disorderly conduct. Prior to the expulsion of a student under this section, the school administrator must find at a hearing which provides procedural due process that:

1. The student's continued presence in the classroom or on the school campus presents a clear, present, and continuing danger of physical harm to the student or to other individuals; or

2. The student has engaged in serious or persistent misbehavior that threatens to impair the educational efficiency of the school and the misbehavior violates specific, published standards of student conduct for the school.

The student's parents or a representative of the student is entitled to notice of and to participate in a disciplinary proceeding under this section.

SECTION 3. AMENDMENT. Subsection 13 of section 15-29-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. To adopt, alter, and repeal, when it deems it expedient, rules and regulations for the reception, organization, grading, government, and instruction of pupils, and for their suspension, expulsion, or transfer from one school to another. No pupil shall be suspended or expelled except for insubordination, habitual indolence, or disorderly conduct, and a suspension shall not be for a longer period than ten days except as provided in section 1 of this Act, nor shall an expulsion be in effect beyond the end of the current term of school.

SECTION 4. AMENDMENT. Section 15-40.1-07.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-07.2. **Payments for alternative programs.** Payments made pursuant to section 15-40.1-07 must be made to high school districts which provide approved alternative education programs for students from the ages of sixteen through eighteen twenty-one who have dropped out of school. Upon determination by the local school district of nonmembership in the regular program of a high school, a district may apply to the superintendent of public instruction for continuation of the foundation aid funding for high school students enrolled in an approved alternative education program. A subtraction will be made from the district average daily membership when a student is dropped from membership and added back for the days of membership in an approved alternative program. Proportionate payments must be made for students enrolled in less than four units and must be based on the number of units carried and the high school weighting factor.

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

Approved March 29, 1985

CHAPTER 216

HOUSE BILL NO. 1625
(Representatives Hill, Schindler, Rydell)
(Senator Peterson)

TEACHERS' PROFESSIONAL PRACTICES COMMISSION

AN ACT to amend and reenact section 15-38-18 of the North Dakota Century Code, relating to the duties of the teachers' professional practices commission.

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

SECTION 1. AMENDMENT. Section 15-38-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-38-18. Duties of commission and superintendent of public instruction. It ~~shall be~~ is the duty of the commission to develop and revise, consistent with state law, professional codes or standards relating to ethics, conduct, and professional performance and practices and to provide recommendations for in-service education of persons engaged in the profession of teaching in the public schools. In the development of such professional codes and standards, the commission shall solicit the assistance of members of the teaching profession and representatives of school administrators, school board members, teacher education professors, and other interested citizens. The commission shall recommend such professional codes and standards as it may approve to the superintendent of public instruction, who after a hearing thereon may, consistent with state law, approve or revise concur or veto and return to the commission for further study the revision of such codes and standards as he the superintendent of public instruction deems proper and in the best interest of the public and the profession, and thereafter shall promulgate adopt such approved or revised codes and standards as regulations rules in accordance with chapter 28-32. The commission shall advise the superintendent of public instruction regarding rules and regulations and procedures to be followed related to the issuance of teachers' certificates.

Approved March 31, 1985

CHAPTER 217

HOUSE BILL NO. 1433
(C. Williams, Shaw)

TEACHERS' FILES MATERIALS REVIEW

AN ACT to amend and reenact section 15-38.2-03 of the North Dakota Century Code, relating to the review of material placed in teachers' files.

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

SECTION 1. AMENDMENT. Section 15-38.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-38.2-03. Right to object to material in file. If ~~the~~ a teacher believes that any material, except the formal evaluations required under sections 15-47-27 and 15-47-38, placed in his the teacher's file is inappropriate or in error, he or she may seek review by the school administration of the placement of such material in the file and the school administration must grant the review. If the teacher is dissatisfied with the result of the administration's review, the teacher is entitled to, on request, receive a formal review before the school board regarding the placement of the material in the file.

Approved March 14, 1985

CHAPTER 218

SENATE BILL NO. 2155
(Committee on Education)
(At the request of Teachers' Fund for Retirement)

TEACHERS' RETIREMENT BENEFITS, REFUNDS, AND REPORTS

AN ACT to create and enact three new subsections to section 15-39.1-04 of the North Dakota Century Code, relating to the definition of beneficiary, contract, and salary under the teachers' fund for retirement; and to amend and reenact sections 15-39.1-16, 15-39.1-17, 15-39.1-20, and 15-39.1-23 of the North Dakota Century Code, relating to annuity options, payment of benefits to beneficiaries, payment of refunds, and the penalty for failure to make required reports and payments under the teachers' fund for retirement.

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

SECTION 1. Three new subsections to section 15-39.1-04 of the 1983 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Beneficiary" means the person designated in writing by the member or, in the absence of such designation, the member's surviving spouse, if any.

"Contract" means a written agreement with any school board or other governing body of any school district of this state or a letter of appointment by a state institution, state agency, or other employer participating in the fund.

"Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, and administrative services during a school year as reported 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. "Salary" does not include fringe benefits such as payments for unused sick leave or vacation leave, housing allowances, transportation expenses, early retirement

incentive pay, severance pay, or medical insurance premiums paid by the employer in addition to salary.

SECTION 2. AMENDMENT. Section 15-39.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-16. Option of teachers eligible to receive annuities. At any time after his retirement under the circumstances provided in this chapter and before the first annuity payment shall become due, a teacher may elect to receive the actuarial equivalent, at that time, of the regular retirement allowance for life, in the form of a reduced retirement allowance payable throughout his life with one of the following additional provisions The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

Option one. Upon the death of the teacher, the reduced retirement allowance shall be continued throughout the life of, and paid to, ~~such~~ the person as the teacher shall have has nominated by written designation filed with the board at the time of retirement.

Option two. Upon the death of the teacher, one-half of the reduced retirement allowance shall be continued throughout the life of, and paid to, ~~such~~ the person as the teacher shall have has nominated by written designation filed with the board at the time of retirement.

Option three. Upon the death of the teacher within five years of the commencement of annuity payments, ~~such~~ the payments shall be continued for the remainder of the five-year period to ~~such~~ the person as the teacher shall have has nominated by written designation filed with the board at the time of retirement.

Option four. Upon the death of the teacher within ten years of the commencement of annuity payments, ~~such~~ the payments shall be continued for the remainder of the ten-year period to ~~such~~ the person as the teacher shall have has nominated by written designation filed with the board at the time of retirement.

The amount of the reduced retirement allowance payable upon the exercise of ~~either any of~~ such these options shall be computed upon an actuarial basis through the use of standard actuarial tables and based upon the ages of the teacher and ~~his~~ the teacher's designated beneficiary.

SECTION 3. AMENDMENT. Section 15-39.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-17. Death of member.

1. If the death of a member who has not acquired a vested interest should occur prior to retirement, a refund of his the member's assessments accumulated with interest shall be made to such the member's beneficiary as he may designate, or, if there is no beneficiary is designated, the same shall be paid to the surviving spouse, or if no surviving spouse, to the surviving children, or if none, to his the member's estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to such the heirs at law who file claim with the fund within one hundred fifty days of the death of the member.
2. If the death of a member who has acquired a vested interest should occur prior to retirement, then his designated the member's beneficiary may apply for a refund of his the member's assessments accumulated with interest. If there is no designated beneficiary, then the same shall be paid to the surviving spouse, or if no surviving spouse, to the surviving children, or if none, to his the member's estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to such the heirs at law who file claim with the fund within one hundred fifty days of the death of the member. In lieu of such a refund, the designated beneficiary, if a beneficiary has been designated, may elect either to receive a monthly annuity in accordance with option one as set forth in under section 15-39.1-16, with the amount of such the annuity being determined as though the deceased member had retired under the option on the day benefits commence to the beneficiary; or the designated beneficiary may elect to receive for sixty months an amount equal to the monthly annuity the member would have received if the member had attained age sixty-five and retired, based on the member's credited service to date of death. If any applicant for an annuity under this section has not paid into the fund assessments equal to the amounts required to be paid under section 15-39.1-09, he the member shall pay any deficiency into the fund before receiving the annuity.
3. If a member who has received annuity payments other than a reduced retirement allowance as provided in section 15-39.1-16 dies prior to receiving accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, or a member who has elected a reduced retirement allowance under option one or two in section 15-39.1-16 dies and the person who was nominated to receive his reduced allowance also dies prior to receiving, together, accumulated annuity payments which exceed the assessments paid by the member to the fund plus interest, the member's beneficiary shall receive a final

payment equal to the assessments the member paid to the fund plus interest as provided in section 15-39.1-20 less the amount of the annuity payments made.

SECTION 4. AMENDMENT. Section 15-39.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-20. Withdrawal from fund. When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, ~~he~~ the member may, after a period of one hundred twenty days, withdraw from the fund and shall be then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. ~~Such~~ The refund shall be in lieu of any other benefits to which the member may be entitled under the terms of this chapter. The accumulated assessments of a member who ceases to be eligible to participate in the fund before accumulating ten years of service credit shall be automatically refunded. The assessments plus interest earned, if not claimed by the member, shall be returned during the month of January next following the date of termination. The automatic refund shall be waived provided the member presents the board with a statement of intent to return to teach in North Dakota within thirty-six months after eligibility to participate in the fund ceases. The board may waive the automatic refund for members who present to the board a statement of intent to return to teach in North Dakota within a period exceeding thirty-six months after eligibility to participate in the fund ceases.

SECTION 5. AMENDMENT. Section 15-39.1-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-23. Penalties for failure to make required reports and payments. Any An employing body failing to file reports required by the board or failing to pay over for credit to the fund the amounts required to be paid by this chapter, shall be subject to a civil penalty of two hundred fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after ~~such~~ the report was required to be filed or ~~such~~ the payment became due. The board, if satisfied the delay was excusable, may waive, or if paid, refund all or part of the two hundred fifty dollar penalty but not the interest. ~~Such~~ The penalty shall be paid to the fund and deposited in the same manner as other receipts under this chapter.

In addition no school district shall share in the apportionment of any money from the state for any year unless the school board, or an officer thereof, has made the reports required by the board as permitted by this chapter and has paid over for credit to the fund the amounts required to be paid by this chapter.

Approved March 22, 1985

CHAPTER 219

SENATE BILL NO. 2153
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

**TEACHERS' FUND FOR RETIREMENT BOARD
COMPENSATION**

AN ACT to amend and reenact section 15-39.1-08 of the North Dakota Century Code, relating to compensation of the members of the teachers' fund for retirement board.

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

SECTION 1. AMENDMENT. Section 15-39.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-08. Compensation of members. Members of the board, excluding ex officio members, shall be compensated for attendance at meetings from the fund at the rate of fifty dollars per day, plus ~~actual~~ expenses of travel, food, and lodging as allowed by law for state employees. No member of the board shall lose regular salary, vacation pay, vacation or any personal leave, or be denied right of attendance by the state or political subdivision thereof while serving on official business of the fund.

Approved April 11, 1985

CHAPTER 220

SENATE BILL NO. 2206
(Committee on Education)

(At the request of the Teachers' Fund for Retirement)

TEACHERS' RETIREMENT BENEFITS

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; and to amend and reenact subsection 2 of section 15-39.1-10 of the North Dakota Century Code, relating to benefits paid to members of the teachers' fund for retirement.

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

SECTION 1. AMENDMENT. Subsection 2 of section 15-39.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The amount of retirement benefits shall be calculated as follows: One and ~~five-hundredths~~ fifteen-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, monthly salary means one-twelfth of the annual salary paid the member. Final final average monthly salary shall be the average of the member's highest monthly salaries received for any three years employed during the last ten years of membership in 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 of the last ten years of service under the fund.

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Postretirement adjustments. Every person receiving monthly benefits from the fund on an account on which benefits were being paid on June 30, 1985, shall receive an increase in benefits beginning July 1, 1985, equal to one percent for each year the person has been retired under the fund. No member may receive more than a ten percent or more than a forty dollar per month increase in benefits under this section.

Approved March 22, 1985

CHAPTER 221

SENATE BILL NO. 2272
(Senators Heinrich, Thane)
(Representatives Martinson, Oban)

TEACHERS' PARTIAL SERVICE RETIREMENT

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to partial service retirement under the teachers' fund for retirement.

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

SECTION 1. A new section to chapter 15-39.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 or more years of age and has ten 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.

Approved March 22, 1985

CHAPTER 222

SENATE BILL NO. 2154
(Committee on State and Federal Government)
(At the request of Teachers' Fund for Retirement and
Public Employees Retirement System)

DUAL MEMBERSHIP IN RETIREMENT FUNDS

AN ACT to create and enact a new section to chapter 15-39.1, a new section to chapter 39-03.1, and a new section to chapter 54-52 of the North Dakota Century Code, relating to reciprocal calculation of benefits in the teachers' fund for retirement, the highway patrolmen's retirement system, and the public employees retirement system and dual membership in the teachers' fund for retirement and the public employees retirement system; and to amend and reenact subsection 1 of section 15-39.1-09 and subsection 4 of section 54-52-01 of the North Dakota Century Code, relating to the membership in the teachers' fund for retirement and the public employees retirement system.

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

SECTION 1. AMENDMENT. Subsection 1 of section 15-39.1-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every teacher ~~shall be, except under subsection 2 of section 2 of this Act, is~~ a member of the fund and ~~shall~~ must be assessed upon ~~his~~ the teacher's salary six and twenty-five hundredths percent per annum, which shall be deducted monthly and paid to the state treasurer by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the state treasurer a sum equal to six and twenty-five hundredths percent per annum of the salary of each teacher employed by it. All such sums ~~shall~~ must be certified by the disbursing official and ~~shall be~~ paid quarterly to the state treasurer who shall set the same aside in the teachers' fund for retirement.

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Effect of public employees retirement system service on vesting and benefits - Dual membership.

1. A teacher's years of service credit for the purpose of vesting of rights under this chapter is the total of the years of service credit earned in the fund and the years, with twelve months of compensation equal to a year, of service employment, earned in the public employees retirement system and the highway patrolmen's retirement system. A teacher who terminates eligible employment under the fund and who has not received a refund of member assessments may elect to remain an inactive member of the fund without refund of assessments if the teacher begins eligible employment under the public employees retirement system or the highway patrolmen's retirement system. The board shall terminate the inactive status of a teacher under this subsection if the teacher gains eligible employment under this chapter or if the teacher terminates eligible employment under the public employees retirement system and the highway patrolmen's retirement system. A teacher who has service credit in the fund and in the public employees retirement system or the highway patrolmen's retirement system, or both, must receive benefits under this chapter calculated by using the certified salaries of the retirement plan of last membership in the computation of final average monthly salary. The board shall calculate benefits for a teacher under this section by using only those years of service credit earned under this chapter.

2. If a teacher, who is a member of the fund, is also employed in any position where membership in the public employees retirement system is required, then for purposes of current employment the teacher is a member of the retirement system in which the teacher has the most years of service credit. If the teacher has an equal amount of service credit in both the fund and the public employees retirement system, the teacher is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the teacher the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the teacher is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that system. If the teacher is required to be a member of the public employees retirement system, the board, at the teacher's election, shall designate the teacher an inactive member of the fund without refund of the teacher's accumulated assessments with interest until the

teacher ceases the employment which requires membership in both the fund and the public employees retirement system.

SECTION 3. A new section to chapter 39-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Effect of other state retirement systems' service on eligibility for benefits and benefits paid. A member's years of service for the purpose of determining eligibility for benefits under this chapter is the total of the years of service earned under this chapter and the years of service employment earned in the public employees retirement system and the years of service credit earned in the teachers' fund for retirement. A member who terminates eligible employment under this chapter and who has not received a refund of the member's accumulated deductions may elect to remain an inactive member of the system without refund of the member's accumulated deductions if the member begins eligible employment in the teachers' fund for retirement or the public employees retirement system. The board shall terminate the inactive status of a member under this section if the member gains eligible employment under this chapter or if the employee terminates eligible employment under teachers' fund for retirement or the public employees retirement system. A member who has service credit in the system and in the teachers' fund for retirement or the public employees retirement system, or both, must receive benefits under this chapter calculated by using the certified salaries of the retirement plan of last membership. The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

SECTION 4. AMENDMENT. Subsection 4 of section 54-52-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 4. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; certified employees of a school district means those employees eligible to participate in the teachers' fund for retirement who shall, except under subsection 2 of section 5 of this Act, are not be eligible employees under this chapter.

SECTION 5. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Effect of teachers' fund for retirement service on eligibility for benefits and benefits paid - Dual membership.

- 1. An employee's years of service employment for the purpose of determining eligibility for benefits under this chapter

is the total of the years of service employment earned in the public employees retirement system and the years of service credit earned in the teachers' fund for retirement and the highway patrolmen's retirement system. An employee who terminates eligible employment under the system and who has not received a refund of the employee's account balance may elect to remain an inactive member of the system without refund of the employee's account balance if the member begins eligible employment in the teachers' fund for retirement or the highway patrolmen's retirement system. The board shall terminate the inactive status of an employee under this subsection if the employee gains eligible employment under this chapter or if the employee terminates eligible employment under teachers' fund for retirement and the highway patrolmen's retirement system. An employee who has service credit in the system and in the teachers' fund for retirement or the highway patrolmen's retirement system, or both, must receive benefits under this chapter calculated by using the certified salaries of the retirement plan of last membership. The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

2. If an employee, who is a participating member, is also employed in any position where membership in the teachers' fund for retirement is required, then for purposes of current employment the employee is a member of the retirement system in which the employee has the most years of service employment. If the employee has an equal amount of service in both the public employees retirement system and the teachers' fund for retirement, the employee is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the employee the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the employee is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that retirement system. If the employee is required to be a member of the teachers' fund for retirement, the board, at the employee's election, shall designate the employee an inactive member of the public employees retirement system until the employee ceases the employment which requires membership in both the public employees retirement system and the teachers' fund for retirement.

Approved March 22, 1985

CHAPTER 223

SENATE BILL NO. 2152
(Committee on State and Federal Government)
(At the request of Teachers' Fund for Retirement)

TEACHERS' RETIREMENT FUND INVESTMENTS

AN ACT to amend and reenact section 15-39.1-26 of the North Dakota Century Code, relating to investment of moneys in the teachers' fund for retirement.

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

SECTION 1. AMENDMENT. Section 15-39.1-26 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-26. Investment of moneys in fund. Investment of the fund shall be under the supervision of the state investment board in accordance with chapter 21-10, except that the investments shall not be limited to those specified in section 21-10-07 and except that the state investment board shall have the authority to contract with insurance companies, trust banks, or other financial institutions to hold and invest fund moneys; provided, that the total amount of all moneys so placed shall not exceed an amount equal to twenty percent of the total moneys of the fund. Such moneys shall 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. Such moneys may be expended by the state investment board by the preparation of an appropriate voucher and submitting such voucher to the office of management and budget, except that any related investment counseling fees, trustee fees, or custodial fees charged by money management firms shall be paid out of moneys in the fund without the need for a prior appropriation or the submission of a voucher.

Approved March 22, 1985

CHAPTER 224

HOUSE BILL NO. 1048
(Legislative Council)
(Interim Education "A" Committee)

FOUNDATION AID

AN ACT to amend and reenact sections 15-40.1-06 and 15-40.1-07 of the North Dakota Century Code, relating to the educational support for elementary and secondary school students and proportionate payments for summer physical education courses.

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

SECTION 1. AMENDMENT. Section 15-40.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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. ~~It is hereby determined that the~~
 - a. The educational support per pupil during the first year of the ~~1983-85~~ 1985-87 biennium shall be one thousand four hundred twenty-five dollars and for the second year of the biennium the educational support

per pupil shall be one thousand ~~three~~ four hundred ~~fifty~~ fifty-five dollars and shall be 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 shall be supported in the amount of two hundred twenty dollars, which shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07.

3. In determining the amount of payment due school districts for per-pupil aid under this section, the product of twenty mills times the latest available net assessed and equalized valuation of property of the school district shall be subtracted from the amount of such aid.

4. No school district shall 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 shall 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.

* SECTION 2. AMENDMENT. Section 15-40.1-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-07. High school per-pupil payments - Amount - Proportionate payments. There shall be paid each year from state funds to all school districts of the county operating high schools and to school districts contracting to educate high school pupils in a federal school, subject to adjustment as provided in section 15-40.1-09, payments as follows:

1. For high schools having under seventy-five pupils in average daily membership, the amount of money resulting from multiplying the factor 1.70 times the educational support per pupil as provided in section 15-40.1-06 for

* NOTE: Section 15-40.1-07 was also amended by section 1 of House Bill No. 1549, chapter 225.

each high school pupil registered in the schools each year.

2. For high schools having seventy-five or more, but less than one hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.40 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
3. For high schools having one hundred fifty or more, but less than five hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.32 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
4. For high schools having a total high school enrollment of five hundred fifty or more pupils in average daily membership, the amount of money resulting from multiplying the factor 1.20 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

Every high school district shall receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. No school district shall receive less in foundation program per-pupil payments than such district would have received in such payments based upon the enrollment in such district for the previous school year. However, no payment shall be made for those pupils for whom federal agencies provide education. Such payments shall not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments shall be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district shall be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments shall be made to the public school district in which such student is enrolled for specific courses. School districts offering high school summer school programs shall be eligible for proportionate payments provided each course offered in such programs satisfies requirements for graduation and comprises at least as many clock hours as courses offered during the regular school term. However, no proportionate payments may be made to school districts for summer physical education programs.

Districts that did not maintain high schools during the year of 1964-1965 shall not be eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered. Payments pursuant to this chapter to school districts in bordering states shall be made after subtracting the amount realized from a twenty-mill levy in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

Approved April 15, 1985

CHAPTER 225

HOUSE BILL NO. 1549
(Knudson, Schindler)

FOUNDATION AID ENROLLMENT DETERMINATION

AN ACT to amend and reenact sections 15-40.1-07, 15-40.1-08, and 15-40.1-09 of the North Dakota Century Code, relating to the method of determining enrollment for foundation aid payments to school districts; and to declare an emergency.

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

* SECTION 1. AMENDMENT. Section 15-40.1-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-07. High school per-pupil payments - Amount - Proportionate payments. There shall be paid each year from state funds to all school districts of the county operating high schools and to school districts contracting to educate high school pupils in a federal school, subject to adjustment as provided in section 15-40.1-09, payments as follows:

1. For high schools having under seventy-five pupils in average daily membership, the amount of money resulting from multiplying the factor 1.70 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
2. For high schools having seventy-five or more, but less than one hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.40 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
3. For high schools having one hundred fifty or more, but less than five hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.32 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

* NOTE: Section 15-40.1-07 was also amended by section 2 of House Bill No. 1048, chapter 224.

4. For high schools having a total high school enrollment of five hundred fifty or more pupils in average daily membership, the amount of money resulting from multiplying the factor 1.20 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

Every high school district shall receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. ~~No school district shall receive less in foundation program per-pupil payments than such district would have received in such payments based upon the enrollment in such district for the previous school year-~~ However, no payment shall be made for those pupils for whom federal agencies provide education. Such payments shall not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments shall be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district shall be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments shall be made to the public school district in which such student is enrolled for specific courses. School districts offering high school summer school programs shall be eligible for proportionate payments provided each course offered in such programs satisfies requirements for graduation and comprises at least as many clock hours as courses offered during the regular school term.

Districts that did not maintain high schools during the year of 1964-1965 shall not be eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered. Payments pursuant to this chapter to school districts in bordering states shall be made after subtracting the amount realized from a twenty-mill levy in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

SECTION 2. AMENDMENT. Section 15-40.1-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-08. Elementary per-pupil payments - Amount. There shall be paid from state funds to school districts of the county operating elementary schools and to school districts contracting to educate elementary pupils in a federal school, employing teachers holding valid certificates or permits, payments based on the number of registered students at the beginning of each school year, adjusted as provided in section 15-40.1-09, as follows:

1. For one-room rural schools there shall be paid that amount of money resulting from multiplying the factor 1.30 times the educational support per pupil as provided in section 15-40.1-06 for each of the first sixteen pupils in grades one through eight in average daily membership, and for each additional pupil in grades one through eight in average daily membership there shall be paid .9 times the educational support per pupil as provided in section 15-40.1-06, except that no payment shall be made for more than twenty pupils in average daily membership.
2. For elementary schools having under one hundred pupils in average daily membership there shall be paid that amount of money resulting from multiplying the factor 1.0 times the educational support per pupil as provided in section 15-40.1-06 for each of the first twenty pupils in grades one through six in average daily membership in each classroom or for each teacher and for each additional pupil in grades one through six in average daily membership in each classroom or for each teacher there shall be paid .9 times the educational support per pupil as provided in section 15-40.1-06, except that no payment shall be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher.
3. For elementary schools having one hundred or more pupils in average daily membership, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary pupils, there shall be paid that amount of money resulting from multiplying the factor .9 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades one through six in average daily membership in each classroom or for each teacher, except that no payment shall be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
4. For elementary schools in school districts having an average daily membership of one thousand or more elementary pupils, there shall be paid that amount of money resulting from multiplying the factor .95 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades one through six in average daily membership in each classroom or for each teacher, except that no payment

shall be made for more than thirty pupils in average daily membership in each classroom or for each teacher.

5. For each of the above classes of elementary schools, except for one-room rural schools, there shall be paid that amount of money resulting from multiplying the factor 1.0 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades seven and eight in average daily membership in each classroom or for each teacher, except that no payment shall be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
6. For elementary schools having pupils under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, there shall be paid that amount of money resulting from multiplying the factor .49 times the educational support per pupil as provided in section 15-40.1-06 for each special education pupil under the compulsory age for school attendance in average daily membership in each classroom or for each teacher.
7. For elementary schools providing kindergartens which are established according to provisions of section 15-45-01, and for out-of-state kindergarten programs, approved by the state superintendent and utilized by North Dakota school districts bordering other states, there shall be paid that amount of money resulting from multiplying the factor .50 times the educational support per-pupil payment for that elementary school as determined under this section for each of the first twenty-five pupils in average daily membership in each classroom or for each teacher, except that no payment shall be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher. The full per-pupil payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller per-pupil payment.

Every school district shall receive at least as much in total payments for elementary pupils as it would have received if it had the highest number of pupils in the next lower category. ~~No school district shall receive less in foundation program per-pupil payments for any year than such district would have received in such payments based upon the enrollment in such district for the previous school year.~~ Payments pursuant to this chapter to school districts in bordering states shall be made after subtracting the amount realized from a twenty-mill levy in the sending school district divided by the total number of resident pupils enrolled in the school district

plus the number of resident pupils from the district attending school in another state.

* SECTION 3. AMENDMENT. Section 15-40.1-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-09. Application for payments - Verification and determination of payments for high school students - Report of county superintendent of schools - Appeal. Immediately upon the completion of the registration of students at the beginning of each school term and in no event later than September tenth of each year, the clerk of each school district within or without this state which is claiming payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a claim on a form prescribed by the superintendent of public instruction stating the number of students registered in high school and elementary grades for which payments are claimed, and such other information as may be reasonably requested by the superintendent of public instruction. Not later than December first, the superintendent of public instruction shall certify to the office of management and budget a list of the school districts and schools not operated by school districts entitled to payments from state funds, together with the amounts to which the several districts and schools are entitled. Such certification shall include an adjustment in the amounts to which the districts and schools are entitled, based upon the difference between payments made under this chapter to such districts and schools for the previous school year as compared to the amount calculated, as provided in sections 15-40.1-07 and 15-40.1-08, upon the average daily membership during the previous school year. Per-pupil aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership or the current year's fall enrollment, whichever is greater. Adjustments must be made if the per-pupil payments for the previous school year were based on the fall enrollment. If the average daily membership for the previous year is less than the fall enrollment for the previous year, the average daily membership for the previous year must be compared with the average daily membership for the second preceding year. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's foundation aid payments. If the average daily membership for the previous year is greater than the previous year's fall enrollment, then the average daily membership for the previous year must be used in calculating any adjustment to a district's foundation aid payments. For purposes of this chapter, "average daily membership" shall mean the total days all students in a given school are in attendance, including days set aside for the North Dakota education association convention, plus any three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after consultation with the teachers, the total days all students are absent, and the two parent-teacher conference days authorized in section 15-47-33, divided by one hundred eighty days. School districts educating children of agricultural migratory workers or offering high school

* NOTE: Section 15-40.1-09 was also amended by section 7 of House Bill No. 1002, chapter 2.

summer school programs during the months of June, July, and August shall not be restricted to payments for a one-hundred-eighty-day school term.

Immediately upon the termination of the school term and in no event later than July fifteenth of each year, the clerk of each school district within or without this state which has received payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a verified statement of the name, residence, and membership of elementary and high school students as provided for in this section, and number of units of high school work taken by each high school student enrolled during the previous school year. Such statement shall be attested to by the county superintendent of schools. The county superintendent shall investigate the validity of the statement and shall determine the residence and other qualifications of each student named in the statement filed with him. He shall certify to the superintendent of public instruction on or before September first of each year the number of enrolled students in each district in his county for the previous school year upon which any adjustment may be based as provided in this section. If any statement is disallowed in whole or in part, notice thereof and the names of students who are disallowed shall be reported to the superintendent of public instruction and to the district filing the statement. Any district may appeal to the superintendent of public instruction from the determination of the county superintendent of schools on or before September fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 14, 1985

CHAPTER 226

HOUSE BILL NO. 1049
 (Legislative Council)
 (Interim Education "A" Committee)

SCHOOL TRANSPORTATION AID

AN ACT to amend and reenact section 15-40.1-16 of the North Dakota Century Code, relating to state transportation aid payments to schools.

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

SECTION 1. AMENDMENT. Section 15-40.1-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 ~~thirty-six cents per mile {1.61 kilometers}~~ during the first year of the 1983-85 biennium and thirty-eight cents during the ~~second~~ each year of the 1983-85 1985-87 biennium for vehicles having a capacity of nine or fewer pupils and ~~seventy-three cents per mile {1.61 kilometers}~~ during the first year of the 1983-85 biennium and seventy-six cents per mile [1.61 kilometers] ~~the second~~ for each year of the 1983-85 1985-87 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 shall be entitled to an amount equal to nineteen 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 nine 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 on-site 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 15, 1985

CHAPTER 227

HOUSE BILL NO. 1326
(Lautenschlager, Frey, Rice)

TUITION OF STUDENTS IN OTHER DISTRICTS

AN ACT to amend and reenact section 15-40.2-05 of the North Dakota Century Code, relating to the payment of student tuition by school districts.

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

SECTION 1. AMENDMENT. Section 15-40.2-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-05. Application of parent or guardian for payment of tuition by district. The parent or guardian of any pupil who is a resident of a district may apply in writing to the school board of the school district of residence of the pupil for approval of the payment of tuition charges to another school district for attendance of the pupil in such other school district. The school board shall, within sixty days of its receipt of such application, meet with the parent or guardian of the pupil concerned and render a decision in regard to payment of tuition charges. If the school board has not rendered a decision within sixty days of receipt of the application, the application shall be deemed approved. If the school board of the district of residence shall approve such application, it shall pay the tuition charges. In the event such application shall be disapproved, the parent or guardian of the pupil may file an appeal with the county superintendent of schools, and a three-member committee consisting of the county judge, state's attorney, and the county superintendent of schools shall within fifteen days consult with the school boards of the districts concerned and with the parent or guardian of the pupil concerned and render a decision in regard to payment of the tuition charges. In making such decision, the committee shall determine whether the pupil is a high school pupil, which, for purposes of this section, shall be defined to mean grades nine through twelve, or whether the pupil is an elementary school pupil, which, for purposes of this section, shall be defined to mean grades one through eight, or whether the pupil is a kindergarten pupil, which, for purposes of this section, shall be defined as a program established pursuant to chapter 15-45, and then proceed in accordance with the following:

1. High School. If the pupil is a high school pupil and the committee finds that the attendance of such pupil is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the particular pupil, or in cases of extreme family or pupil hardship, the committee may approve or disapprove the application. Upon approval, the committee shall approve the payment of tuition by the district of residence of the pupil, obligating such district of residence to pay the same. The committee's approval for the payment of tuition may be for any fixed number of school terms, up to the completion of the pupil's high school education. The decision of the committee may be appealed to the state board of public school education and the decision of the board shall be final.
2. Elementary. If the pupil is an elementary pupil and the committee finds that the attendance of such pupil is necessitated by shorter distances or in cases of extreme family or pupil hardship, the committee may approve or disapprove the application. Upon approval, the committee shall approve the payment of tuition by the district of residence of the pupil, obligating such district of residence to pay the same. The committee's approval for the payment of tuition shall be limited to one school term, and subsequent applications for the payment of tuition may be made annually. The decision of the committee shall be final.
3. Kindergarten. If the pupil is a kindergarten pupil, the school board of the district of the pupil's residence may pay tuition to the receiving district. The committee shall not hear an appeal from the parents or guardian as provided for in this section if the school board of the district of residence decides not to pay tuition to the admitting district. If the school board of the district of residence does not pay the tuition to the admitting district, the parent or guardian of the pupil may pay the tuition to the admitting district under the provisions of section 15-40.2-02.

If any portion of the school district lies in more than one county, the committee shall consist of the county judge, state's attorney, and county superintendent of schools from each county lying within the district, and the concurrence of at least two members from each county shall be necessary for a majority of the committee a majority of all members of the committee must render a decision regarding payment of the tuition. In the event that the district of residence of the pupil does not comply with the decision requiring that the tuition charges be paid, the admitting district shall notify the county superintendent of schools of the county of the pupil's residence and the state superintendent of public instruction of such fact, and upon verification by the county

superintendent of schools that such tuition payments are in fact due the admitting district and are unpaid, all payments from the state for foundation aid to the district of residence of the pupil, shall be withheld until the tuition due has been fully paid.

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 March 14, 1985

CHAPTER 228

SENATE BILL NO. 2261
(Redlin)

SCHOOL CONTRACT BID REQUIREMENTS

AN ACT to amend and reenact section 15-47-15 of the North Dakota Century Code, relating to bidding requirements for school contracts.

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

* SECTION 1. AMENDMENT. Section 15-47-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-15. School contracts - Advertisement for bids - Publication - Exceptions - Penalty. No contract involving the expenditure of an aggregate amount greater than ~~four~~ eight thousand dollars, except as hereinafter set forth, shall be entered into by any school district of any kind or class except upon sealed proposals and to the lowest responsible bidder after ten days' notice by at least one publication in a legal newspaper published in the county in which the school district, or a portion thereof, is located. If no newspaper is published in such county, the publication shall be made in a newspaper published in an adjacent county. The provisions of this section shall not apply to any of the following classes of contracts:

1. For personal services of employees of the district.
2. For school text or reference books.
3. For any article which is not for sale on the open market.
4. For any patented, copyrighted, or exclusively sold device or feature required to match articles already in use.
5. For any patented, copyrighted, or exclusively sold article of so distinctive a nature that only one make of the article can be purchased.
6. Any building contract.

Such exceptions shall be strictly construed. Every member of a school board who participates in a violation of this section shall be guilty of a class B misdemeanor.

Approved March 22, 1985

* NOTE: Section 15-47-15 was also amended by section 4 of House Bill No. 1257, chapter 214.

CHAPTER 229

SENATE BILL NO. 2279
(Holmberg)

TEACHER EVALUATION

AN ACT to amend and reenact sections 15-47-27, 15-47-27.1, and subsection 5 of section 15-47-38 of the North Dakota Century Code, relating to the dates for the evaluation of teachers.

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

SECTION 1. AMENDMENT. Section 15-47-27 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-27. Time for renewal of teachers' contracts. Any teacher who has been employed by any school district or the director of institutions in this state during any school year, shall be notified in writing by the school board or the director of institutions, as the case may be, not earlier than March first and not later than May first in the school year in which he or she has been employed to teach, of the determination not to renew the teacher's contract for the ensuing school year, if such determination has been made; and failure to give such written notice on or before said date shall constitute an offer to renew the contract for the ensuing school year under the same terms and conditions as the contract for the then current year. On or before May first in any year and not earlier than March first, all teachers shall be notified of a date, which shall not be less than thirty days after the date of such notice, upon which they will be required to accept or reject proffered reemployment, and failure on the part of the teacher to accept said offer within such time shall be deemed to be a rejection of the offer. Any teacher who shall have accepted the offer of reemployment, either by the action or nonaction of the school board or the director of institutions, on or before May first, as herein provided, shall be entitled to the usual written contract for the ensuing school year, as provided by law and shall notify the school board or the director of institutions in writing of his or her acceptance or rejection on or before the date specified or before June first, whichever is earlier. Failure on the part of the teacher to provide such notification shall relieve the school board or the director of institutions of the continuing contract provision

of sections 15-47-26 through 15-47-28. Nothing in this section shall be construed as in any manner repealing or limiting the operation of any existing law with reference to the dismissal of teachers for cause. Each district shall have an established system through which two written evaluations are prepared for every teacher employed by the district during each school year. These written performance reviews shall be completed and made available to the teacher no later than December fifteenth for the first review and February twenty-eighth March fifteenth for the second review each year.

SECTION 2. AMENDMENT. Section 15-47-27.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-27.1. First-year teachers - Evaluation - Renewal and nonrenewal of contracts. Each school district and the director of institutions in this state shall have an established system through which two written evaluations are prepared during each school year for every teacher who is in his or her first year of teaching. The evaluation must be in the form of written performance reviews, and the first review must be completed and made available to first-year teachers no later than December fifteenth and the second review must be completed and made available no later than February twenty-eighth March fifteenth of each year. If a school board or the director of institutions determines not to renew the contract of a first-year teacher, written notification of the decision of nonrenewal must be given to the teacher no earlier than April fifteenth nor later than May first. Failure by a school board or the director of institutions to provide written notification of nonrenewal to a first-year teacher by May first constitutes an offer to renew the contract of the teacher for the ensuing school year under the same terms and conditions as the contract for the current year. Such notification of nonrenewal given to a first-year teacher must contain a detailed description of the reason or reasons for the nonrenewal.

*** SECTION 3. AMENDMENT.** Subsection 5 of section 15-47-38 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 shall be informed in writing of the time, which shall 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 shall 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

*** NOTE:** Section 15-47-38 was also amended by section 28 of Senate Bill No. 2086, chapter 82.

respect to the teacher's overall performance. Each district shall have an established system through which two written evaluations are prepared for every teacher employed by the district during each school year. These written performance reviews shall be completed and made available to the teacher no later than December fifteenth for the first review and February twenty-eighth March fifteenth for the second review each year. The reasons given by the board for not renewing a teacher's contract shall be sufficient to justify the contemplated action of the board and shall not be frivolous or arbitrary but shall 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. 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. If the board finds that the reasons have not been substantiated, the nonrenewal proceedings will be dismissed. The meeting shall be an executive session of the board unless both the school board and the teacher shall agree that it shall be open to other persons or the public. The teacher may be represented at the meeting by any two representatives of his 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 school district clerk, and 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 shall be granted a continuance of not to exceed seven days. 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. The determination not to renew a contract if made in good faith shall be final and binding on all parties. Final notice of the determination not to renew a contract shall be given in writing by May first as provided in section 15-47-27.

Approved April 4, 1985

CHAPTER 230

HOUSE BILL NO. 1402
(Richard, Brokaw)

SCHOOL DISTRICT ANNEXATION OR DISSOLUTION

AN ACT to amend and reenact section 15-53.1-41 of the North Dakota Century Code, or in the alternative to amend and reenact section 15-27.4-01 of the North Dakota Century Code as created by Senate Bill No. 2065, as approved by the forty-ninth legislative assembly, relating to the dissolution of school districts; to repeal section 15-53.1-05.2 of the North Dakota Century Code, or in the alternative to repeal section 15-27.2-03 of the North Dakota Century Code as created by Senate Bill No. 2065, as approved by the forty-ninth legislative assembly, relating to proposed annexations involving ten percent or more of the school district's assessed valuation; and to declare an emergency.

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

SECTION 1. AMENDMENT. If Senate Bill No. 2065 does not become effective, section 15-53.1-41 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-53.1-41. Dissolution of school districts - Responsibility of the county committee - Duty of county superintendent. The county committee shall forthwith schedule and provide notice of a hearing to dissolve a school district and attach the territory to other districts in the manner provided in section 15-53.1-29 in the event of any of the following occurrences-

- 1- Receipt by the county committee of it receives notice from the county superintendent that:
 - a- 1. A school district within the county can no longer levy sufficient taxes to carry on normal school operations;
 - b- 2. A school district within the county has not operated a school by the thirty-first of December of the year following the calendar year in which such operation ceased, providing fifty percent of the pupils from such

- school district are not attending schools in another state;
- e- 3. There exists territory within the county not organized into a school district; or
 - d- 4. Any portion of a school district within the county has been severed from such district by the expansion and growth of a city and the severed portion is not contiguous with such district. As used in this subdivision, the word "contiguous" shall have the same meaning as is ascribed to it in section 15-53.1-05.
- 2- ~~Receipt by the county committee from the state board of a returned annexation petition sent back to the county committee pursuant to the provisions of section 15-53.1-05.2.~~

After approval by the state board of the proposed dissolution, the county committee shall provide for the attachment of the territory of the dissolved district to one or more adjoining school districts effective July first next following the approval unless another effective date is provided for by the county committee. Qualified electors residing in the attached territory shall be entitled to vote and hold office in the school district to the same extent as all other qualified electors residing therein, and such territory shall be part of the school district as fully in every respect as if it had been included in the district when organized. Nothing herein shall prevent the district from providing for the education of such children to the extent that its current budget in the judgment of the school board will permit, or shall relieve the district from any existing responsibility for the education of children attending its schools before the effective date of the order. Nothing herein shall change the effect of any election held within the school district pursuant to chapter 15-48 before the effective date of the order. This section applies to all school districts in the state including the board of education of the city of Fargo and the district under its jurisdiction for school purposes.

SECTION 2. AMENDMENT. If Senate Bill No. 2065, as approved by the forty-ninth legislative assembly, becomes effective, section 15-27.4-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.4-01. Dissolution of public school districts - Responsibility of the county committee - Duty of county superintendent. The county committee shall forthwith schedule and provide notice of a public hearing to dissolve a school district and attach the territory to other school districts upon the following occurrences:

1. Receipt by the county committee of notice from the county superintendent that:

- a. A school district can no longer levy sufficient taxes to carry on normal school operations;
 - b. A school district within the county has not operated a school by the thirty-first of December of the year following the calendar year in which such operation ceased, providing fifty percent of the pupils from such school district are not attending schools in another state;
 - c. There exists territory not organized into a school district; or
 - d. Any portion of a school district within the county has been severed from the district by the expansion and growth of a city and the severed portion is not contiguous with the district.
2. ~~Receipt by the county committee from the state board of a returned annexation petition sent back to the county committee pursuant to section 15-27-2-03-~~
- 3- When any portion of a school district has been left out of a school district reorganization, the county committee shall, within forty-five days after voter approval of the school district reorganization proposal, order a hearing pursuant to section 15-27.4-02 for the purpose of determining to which school district or districts the remaining territory should be attached.

After approval by the state board of the proposed dissolution, the county committee shall provide for the attachment of the territory of the dissolved district to one or more adjoining school districts effective July first next following the approval unless another effective date is provided for by the county committee. Qualified electors residing in the attached territory are entitled to vote and hold office in the school district to the same extent as all other qualified electors residing in the district, and the territory is part of the school district as fully in every respect as if it had been included in the district when organized. This section does not prevent the district from providing for the education of the children to the extent that its current budget and the judgment of the school board will permit, or relieve the district from any existing responsibility for the education of children attending its schools before the effective date of the order. This section does not change the effect of any election held within the school district pursuant to chapter 15-48 before the effective date of the order.

SECTION 3. REPEAL. If Senate Bill No. 2065 does not become effective, section 15-53.1-05.2 of the North Dakota Century Code is hereby repealed.

SECTION 4. REPEAL. If Senate Bill No. 2065, as approved by the forty-ninth legislative assembly, becomes effective, section 15-27.2-03 of the North Dakota Century Code is hereby repealed.

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

Approved March 27, 1985

CHAPTER 231

HOUSE BILL NO. 1407
(Representatives Hamerlik, Cleveland, R. Berg)
(Senator Stenehjem)

LEASES OF REVENUE-PRODUCING BUILDINGS

AN ACT to amend and reenact section 15-55-04.1 of the North Dakota Century Code, relating to the leasing of revenue-producing buildings.

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

SECTION 1. AMENDMENT. Section 15-55-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-55-04.1. Lease of revenue-producing buildings. The state board of higher education may, at such times as it deems necessary, enter into agreements with other persons, including any federal or state agency, for the lease of revenue-producing buildings, constructed or purchased under the provisions of this chapter, upon such terms and conditions as the board shall deem proper. However, any such lease entered into pursuant to this section shall be limited to a maximum term of ~~two~~ ten years.

Approved March 14, 1985

CHAPTER 232

SENATE BILL NO. 2062
(Legislative Council)
(Interim Education "A" Committee)

SPECIAL EDUCATION BOARDING CARE COSTS

AN ACT to amend and reenact section 15-59-07.2 of the North Dakota Century Code, relating to reimbursements made by the superintendent of public instruction for special education boarding care costs; and to repeal section 15-59-07.1 of the North Dakota Century Code, relating to the cost of out-of-state boarding care for handicapped students.

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

SECTION 1. AMENDMENT. Section 15-59-07.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-07.2. Legislative intent-- Reimbursement by the department of human services superintendent of public instruction for special education boarding care costs. It is the intent of the legislative assembly that the department of human services The superintendent of public instruction, within the limits of legislative appropriations provided therefor, make reimbursements to local school districts toward defraying, shall reimburse local school districts for eighty percent of the costs of room and board paid on behalf of handicapped children placed in facilities outside their school district of residence for special education services not available within their school district of residence. It is the intent of the legislative assembly that reimbursements Reimbursements shall be made regardless of whether the child has been placed in a facility within the state or outside the state. Any special education room and board costs in excess of those payments made by the department of human services superintendent of public instruction are the responsibility of the local school district. The placement of handicapped children in public or private facilities will be made by school districts. Placement in congregate care will be made in facilities designated by the department of human services.

SECTION 2. REPEAL. Section 15-59-07.1 of the North Dakota Century Code is hereby repealed.

Approved April 11, 1985

ELECTIONS

CHAPTER 233

HOUSE BILL NO. 1058
(Legislative Council)
(Interim Elections Committee)

INITIATIVE, REFERENDUM, OR RECALL PETITION SIGNATURE FORMS

AN ACT to amend and reenact section 16.1-01-09 of the North Dakota Century Code, relating to regulations governing initiative, referendum, or recall petitions.

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

* SECTION 1. AMENDMENT. Section 16.1-01-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-01-09. Regulations governing initiative, referendum, or recall petitions.

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.
2. No person shall sign any initiative, referendum, or recall petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person shall sign any petition more than once, and each signer shall add the signer's residential mailing address and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. A petition must be in substantially the following form:

* NOTE: Section 16.1-01-09 was also amended by section 1 of House Bill No. 1057, chapter 234, and amended by section 39 of House Bill No. 1059, chapter 235.

	Month Day Year	Name Of Elector	Residence (Mailing Address)	City, State
1.	-----	-----	-----	-----
2.	-----	-----	-----	-----
3.	-----	-----	-----	-----
4.	-----	-----	-----	-----
5.	-----	-----	-----	-----
6.	-----	-----	-----	-----
7.	-----	-----	-----	-----
8.	-----	-----	-----	-----

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter.

- 2- 3. Each copy of any petition provided for in this section, before being filed, must have attached thereto an affidavit executed by the circulator in substantially the following form:

State of North Dakota)
) ss.
 County of -----)
 (county where signed)
 I, -----, being duly sworn,
 (circulator)
 depose and say that I am a qualified elector; that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

 (signature of circulator)
 Subscribed and sworn to before me
 this ----- day of -----, 19---,
 at -----, North Dakota.
 (city)

 (signature of notary)
 Notary Public, North Dakota

- 3- 4. A petition for recall must include, before the signature lines, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and residential mailing addresses of not less than five electors of the state, county, or district in which the official is to be recalled who are sponsoring the recall.

- ~~4.~~ 5. No petition shall be circulated under the authority of article III of the Constitution of North Dakota by a person who is less than eighteen years of age, nor shall the affidavit called for by subsection 2 be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety.

Approved March 14, 1985

CHAPTER 234

HOUSE BILL NO. 1057
 (Legislative Council)
 (Interim Elections Committee)

INITIATIVE, REFERENDUM, OR RECALL PETITIONS

AN ACT to amend and reenact section 16.1-01-09 of the North Dakota Century Code, relating to requirements for the form and circulation of initiative, referendum, or recall petitions.

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

* SECTION 1. AMENDMENT. Section 16.1-01-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-01-09. Regulations governing initiative Initiative, referendum, or recall petitions - Signature - Form - Circulation.

1. No person shall sign any initiative, referendum, or recall petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person shall sign any petition more than once, and each signer shall add the signer's residential mailing post-office address including the signer's residential address or post-office box number and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. A referendum or initiative petition must be in substantially the following form:

REFERENDUM [INITIATIVE] PETITION
TO THE SECRETARY OF STATE, STATE OF NORTH DAKOTA

We, the undersigned, being qualified electors request
[House (Senate) Bill ----- passed by the
----- Legislative Assembly] [the following
initiated law] be placed on the ballot as provided by
law.

- * NOTE: Section 16.1-01-09 was also amended by section 1 of House Bill No. 1058, chapter 233, and amended by section 39 of House Bill No. 1059, chapter 235.

SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

<u>Name</u>	<u>Address</u>
----- (Chairman) -----	-----
-----	-----

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERScoreD, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF NO MATERIAL IS UNDERScoreD OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED.

[The full text of the measure must be inserted here.]

QUALIFIED ELECTORS

		<u>Post-Office Address</u>		
		<u>Residencee</u>		
		<u>{Mailing</u>		
		<u>Address};</u>		
<u>Month,</u>	<u>Name</u>	<u>Residential Address</u>	<u>City,</u>	
<u>Day,</u>	<u>of</u>	<u>or P.O. Box No.</u>	<u>State</u>	
<u>Year;</u>	<u>Qualified</u>			
	<u>Elector;</u>			
1.	-----	-----	-----	-----
2.	-----	-----	-----	-----
3.	-----	-----	-----	-----
4.	-----	-----	-----	-----
5.	-----	-----	-----	-----
6.	-----	-----	-----	-----
7.	-----	-----	-----	-----
8.	-----	-----	-----	-----

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter. In this section for referral petitions "full text of the measure" means the bill as passed by the legislative assembly excluding the session and sponsor identification. In this section for initiative petitions "full text of the measure" means an enacting clause which must be: "BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA" and the body of the bill. If the measure amends the law, all new statutory material must be underscored and all statutory material to be deleted must be overstruck by dashes. When repealing portions of the law, the measure must contain a repealer clause and, in brackets, the text of the law being repealed.

- 2. Each copy of any petition provided for in this section, before being filed, must have attached thereto an

affidavit executed by the circulator in substantially the following form:

State of North Dakota)
) ss.
 County of -----)
 (county where signed)

I, -----, being duly sworn,
 (circulator)
 depose and say that I am a qualified elector; that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

 (signature of circulator)
 Subscribed and sworn to before me this ----- day
 of -----, 19---, at -----, North Dakota.
 (city)

 (signature of notary)
 Notary Public, North Dakota

3. A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 1, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and ~~residential mailing~~ post-office addresses including the residential addresses or post-office box numbers of not less than five electors of the state, county, or district in which the official is to be recalled who are sponsoring the recall.
4. No petition shall be circulated under the authority of article III of the Constitution of North Dakota by a person who is less than eighteen years of age, nor shall the affidavit called for by subsection 2 be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety. A petition may not include a statement of intent or similar explanatory information.

Approved March 31, 1985

CHAPTER 235

HOUSE BILL NO. 1059
(Legislative Council)
(Interim Elections Committee)

QUALIFIED ELECTOR

AN ACT to create and enact a new section to chapter 1-01 of the North Dakota Century Code, relating to a definition of qualified elector for petition purposes; and to amend and reenact sections 4-02-27.2, 4-02-30, 4-02-31, 4-08-01, 4-08-02, 4-08-05, 4-16-03, 4-22-42, 11-02-02, subsection 3 of section 11-03-02, sections 11-04-04, 11-05-03, subsection 2 of section 11-05.1-03, sections 11-06-09, 11-07-02, 11-07-06, 11-11-51, 11-11-59, 11-12-01, 11-13-16, 11-28.3-01, 11-28.3-05, 11-28.3-06, 11-30-01, 11-31-01.1, 15-18-05, 15-20.2-13, 15-22-25, subsection 2 of section 15-28-01, sections 15-40.2-01, 15-45-01, 15-47-43, 15-48-01, 15-53.1-05, 15-53.1-16, 15-53.1-34, 15-53.1-39, subsection 3 of section 16.1-01-09, section 16.1-01-12, subsection 4 of section 16.1-11-30, section 16.1-11-37, subsection 5 of section 16.1-12-02, subsection 1 of section 16.1-12-04, sections 16.1-16-01, 18-06-11, 18-10-01, subsections 2 and 3 of section 18-10-11, sections 21-03-10, 21-03-10.1, 21-03-11, 23-14-01, 23-14-13, 23-18.2-03, subsections 1 and 2 of section 23-30-02, sections 23-30-11, 24-05-01, 24-07-05, 24-07-11, 24-07-13, subsection 3 of section 32-28-03, sections 40-02-05, 40-03.1-01, 40-03.1-02, 40-03.2-01, 40-03.2-02, 40-04-01, 40-04-08, 40-04-09, 40-05.1-02, 40-08-03, 40-08-03.1, 40-08-03.2, 40-08-08, 40-08-16, 40-09-10, 40-10-01, 40-10-08, 40-12-02, 40-12-05, subsections 2 and 3 of section 40-12-06, sections 40-12-08, 40-12-09, 40-21-07, 40-37-02, 40-38-01, subsections 3 and 4 of section 40-38-02, sections 40-38.1-02, 40-44-02, 40-51.2-05, subsection 1 of section 40-53.1-01, sections 40-53.2-02, 40-55-08, 54-10-14, 54-10-15, 54-40-03, subsection 3 of section 57-15-12, sections 57-15-14, 57-15-16, 57-15-22.2, 57-15-26.3, 57-15-44, 57-15-50, 57-15-51, 57-15-51.1, subsection 3 of section 57-15-56, sections 57-15-57, 57-16-04, 58-02-01, 58-02-08, 58-02-09, 58-02-10, 58-02-11, 58-02-21, 58-02-25, 58-02-32, 58-04-05, 58-13-07, 58-15-01, 61-04.1-23, subsection 4 of section 61-04.1-24, sections 61-04.1-29, 61-04.1-30, 61-24-03, and 61-24.2-14 of the North Dakota Century Code, relating to election and petition requirements.

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

SECTION 1. A new section to chapter 1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Qualified elector" defined. Unless otherwise provided, as used in this code concerning qualifications for signing petitions to governmental bodies, "qualified elector" means a citizen of the United States who is eighteen years of age or older; and is a resident of this state and of the area affected by the petition.

SECTION 2. AMENDMENT. Section 4-02-27.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-27.2. Additional levy in certain counties. The board of county commissioners of any county having a population in excess of twenty-five thousand, according to the latest federal decennial census, shall, when petitioned by at least five percent of the qualified electors of the county, including qualified electors residing in at least one-half of the voting precincts of the county as determined by the number of votes cast in the county for the office of governor at the preceding general election, submit to the qualified electors of the county at any general election or special election called for such purpose, the proposition of authorizing the board of county commissioners to purchase or lease in the name of the county not to exceed two hundred forty acres [97.12 hectares] of real estate and to construct thereon such buildings and other improvements as may be deemed desirable for the conduct of a county fair and authorizing the board of county commissioners, if the county general fund is deemed insufficient to provide funds therefor, to levy a tax not exceeding the limitation in subsection 2 of section 57-15-06.7. If a majority of the votes cast at the election are in favor of the proposition, including the proposed levy, the tax shall be levied and collected as are other property taxes, with the proceeds to be placed into a fund to be known as the "county fair fund". The tax shall be in addition to any mill levy limitations provided by law, including the levies authorized by sections 4-02-27 and 4-02-27.1.

SECTION 3. AMENDMENT. Section 4-02-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-30. Tax provided for to be submitted to vote. Whenever the board of county commissioners ~~shall have~~ 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 shall be submitted to a vote of the ~~people~~ 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 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 board, asking the discontinuance of such 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 tax shall be continued. The ballot shall 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 at such election is in favor of discontinuing the tax, the board of county commissioners shall not thereafter levy any tax under this chapter until the question of resuming such annual levy and collection of the tax is submitted to a vote of the people qualified electors of the county. The ballots to be used at such election shall 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 at such election is in favor of resuming the tax, 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 4. AMENDMENT. Section 4-02-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-31. Purchase or lease of land - Election required. The board of county commissioners in any county in the state may submit, or when petitioned by at least five percent of the legal voters qualified electors of the county in at least one-half of the voting precincts, based upon the votes cast in the county for secretary of state at the last general election, shall submit, to the voters qualified electors of the county at any general election the proposition of purchasing or leasing not more than eighty acres of land in the name of the county to be used for county fair purposes. If a majority of the legal voters qualified electors at the election shall vote in

favor of purchasing or leasing land for such purposes, the board of county commissioners shall purchase or lease, in conformity with this chapter, a tract of land not to exceed eighty acres, in the name of the county. The board of county commissioners shall construct such buildings and improvements on the land as it shall deem necessary for the operation and management of the fair. The election on the purchase or lease of land shall be conducted and the votes counted as at other elections.

SECTION 5. AMENDMENT. Section 4-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-08-01. County agent work - Petition - Submitting to vote. Upon the filing with the county auditor of a petition containing the names of twenty percent of the qualified electors of the county as determined by the votes cast for governor in the county at the last preceding election, the board of county commissioners shall submit to the ~~people~~ qualified electors at the next general election the question of providing a tax levy for county agent work.

SECTION 6. AMENDMENT. Section 4-08-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-08-02. Form of petition. The petition provided for in section 4-08-01 shall be in substantially the following form:

PETITION PROVIDING FOR LEVY FOR COUNTY AGENT WORK

We, the undersigned, qualified electors of ----- County, North Dakota, do hereby respectfully petition the honorable board of county commissioners that it levy a tax sufficient but not to exceed two mills to employ a county agent for the purpose of carrying on county agent work in cooperation with the North Dakota state university of agriculture and applied science.

SECTION 7. AMENDMENT. Section 4-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-08-05. Petition for discontinuance of county agent work - Form of petition - Election. The question of the discontinuance of county agent work may be submitted to the ~~people~~ qualified electors in the manner provided in section 4-08-01. A separate ballot worded as is provided in section 4-08-03 shall be used at the election. The petition for discontinuing the levy shall be in the following form:

We, the undersigned qualified electors of ----- County, North Dakota, do hereby petition the honorable board of county commissioners that it place on the ballot at the next general election the question of discontinuing county agent work.

SECTION 8. AMENDMENT. Section 4-16-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-16-03. Bounty offered upon petition. If a petition signed by not less than twenty percent of the voters qualified electors of a county determined by the votes cast for governor at the last general election ~~shall be~~ is filed with the board of county commissioners asking that a bounty be offered for the destruction of gophers, rabbits, or crows, the board shall offer such bounty upon the pest or pests mentioned in said petition. Thereupon, the board shall publish, during the month of March of each year, in the local papers of the county, the amount of bounty or reward to be paid for the destruction of the pest or pests described in the petition, the manner of ascertaining the number destroyed, and the procedure necessary to obtain such reward.

SECTION 9. AMENDMENT. Section 4-22-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-42. Discontinuance of districts - Petition - Referendum - Eligible voters qualified electors. After the expiration of five years from the date upon which a district has been organized, twenty-five percent of the qualified electors living within the boundaries thereof may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee shall then conduct public meetings and hearings upon such petition in order to determine whether or not there is sufficient basis for a referendum to be held. If the committee determines that there is sufficient basis for a referendum, it shall give due notice of the holding of a referendum and shall issue appropriate regulations governing the conduct thereof within sixty days after it has made its determination. The question to be voted on at the referendum shall be submitted by ballot in substantially the following form:

Should the (insert name of district) -----
 be terminated? Yes / /
 No / /

All qualified electors within the boundaries of the district shall be eligible to vote in such referendum. The committee shall supervise the referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as herein provided and the referendum shall have been conducted fairly.

SECTION 10. AMENDMENT. Section 11-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-02-02. How territory organized - Petition. Before any unorganized territory may be organized into a county, a written petition therefor signed by at least fifty percent of the bona fide qualified electors of the territory as determined by the number of votes cast for the office of governor at the preceding general election must be presented to the governor. The petition shall contain the name of the proposed county, describe the boundaries thereof, state that the

unorganized territory has a population of at least five thousand bona fide inhabitants, and request the governor to organize the territory into a county under the name stated in the petition.

SECTION 11. AMENDMENT. Subsection 3 of section 11-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Be signed by a majority of the legal veterans qualified electors residing in the territory to be taken from the existing county or counties as determined by the vote cast for the office of governor at the last preceding general election.

SECTION 12. AMENDMENT. Section 11-04-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-04-04. County seat - Removal - Petition - Election. Whenever a petition of qualified electors of the county equal in number to twenty-five percent of the votes cast in the county for the office of governor at the preceding gubernatorial election shall be presented to the board of county commissioners of that county asking removal of the county seat from its current location to a place designated in the petition and that an election be held to determine whether or not such removal shall occur, the board of county commissioners shall submit the question of removal to the qualified electors of the county at the next general election if the petition conforms to the requirements of this chapter.

SECTION 13. AMENDMENT. Section 11-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-05-03. Consolidation of all territory within organized county with two or more counties - Petitions required - Election. A county may be disorganized and the territory therein divided among and attached to two or more adjoining counties upon compliance with the provisions of this section. Petitions signed by thirty percent of the veterans qualified electors of each portion of the petitioning county, as determined by the vote cast for the office of governor at the last preceding general election, shall be filed with the boards of county commissioners of the petitioning county and of the adjoining counties named in such petitions. Such petitions shall not be considered unless petitions are filed under this section which together dispose of all of the territory in the petitioning county, nor unless such petitions have been filed at least ninety days prior to a statewide primary election. If the petitions conform to the requirements of this section, the boards of county commissioners to which such petitions are addressed shall submit the question of consolidation to the qualified electors of each of the counties affected at the next statewide primary election.

SECTION 14. AMENDMENT. Subsection 2 of section 11-05.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. To hold meetings and hold public hearings to consider proposals which may be submitted by qualified electors of the county or adjoining counties or obtain public views upon plans prepared by the committee.

SECTION 15. AMENDMENT. Section 11-06-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-06-09. When territory less than one congressional township - Election. When a majority of the ~~legal voters~~ qualified electors of a territory containing less than one congressional township shall petition the boards of county commissioners as provided in section 11-06-01, such boards, in their discretion, may order elections to be held as provided in this chapter to pass upon the question of the change in county lines prayed for in the petitions.

SECTION 16. AMENDMENT. Section 11-07-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-07-02. When districts must be changed - Additional meeting - Public hearing - Notice. Each redistricting board shall, within three months after official publication of each federal decennial census, meet at the call of the chairman to organize as provided in this chapter and to consider redistricting. A redistricting board may additionally meet during a census interim if a resolution calling for a meeting is passed by the board of county commissioners or a petition calling for a meeting signed by ten percent of the number of county qualified electors ~~voting of the county as determined by the number of votes cast~~ for governor in the last gubernatorial election is presented to the board of county commissioners. If any one district in the county varies more than ten percent from the average population per commissioner in such county determined by dividing the total population of the county at the last federal decennial census by the number of commissioners' districts in such county, or if county commissioners are elected at large, the redistricting board shall redistrict the county, as provided in this chapter. If redistricting of a county is required, the chairman of the redistricting board shall, within thirty days after the date of the above meeting, call a meeting for the purpose of conducting a public hearing to review alternative plans for such redistricting. Notice of such meeting shall be published or caused to be published by the chairman in the official county newspaper at least ten days prior to the date of such hearing.

SECTION 17. AMENDMENT. Section 11-07-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-07-06. Petitions - Signers required - Submission of question to voters. The board of county commissioners, upon receipt of a

petition signed by at least ten percent of the qualified electors of the county as determined by the number of votes cast for the office of governor at the preceding general election, shall, in accordance with applicable provisions of title 16, cause the question of whether commissioners shall be elected at large to be submitted to the voters qualified electors of the county at the next succeeding primary or general election. If approved by sixty percent of the qualified electors voting at such election, all county commissioner districts in such county shall be immediately dissolved, and thereafter as the term of office of each member of the board of county commissioners expires, such office shall be filled by an election at large.

SECTION 18. AMENDMENT. Section 11-11-51 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-51. **Petitions to board of county commissioners - Qualifications of signers.** The signers of any petition presented to the board of county commissioners praying for the expenditure of county funds shall be ~~legal voters, property holders, and taxpayers~~ qualified electors of the district affected by the petition.

SECTION 19. AMENDMENT. Section 11-11-59 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-59. **Creation of booster station by election.** When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the question of establishing a television booster station, ultrahigh frequency, hereinafter referred to as an ultrahigh frequency booster station, is presented to the board of county commissioners, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by sixty percent of the votes cast, the board of county commissioners shall establish an ultrahigh frequency booster station, within the limits of the county, at a site to be named and established by the board of county commissioners.

SECTION 20. AMENDMENT. Section 11-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-12-01. **Petition to change number of county commissioners - Election on question.** If at least twenty percent of the qualified electors of a county, as determined by the number of votes cast for the office of governor at the preceding general election, shall petition the board of county commissioners for:

1. The increase of the number of county commissioners from three to five if the county, at the time of the filing of the petition, has three commissioners; or

2. The decrease of the number of county commissioners from five to three if the county, at the time of the filing of the petition, has five commissioners,

the board of county commissioners shall submit the question presented by the petition to the qualified electors of the county at a special election to be held in connection with the next statewide primary or general election, whichever is specified in the petition.

SECTION 21. AMENDMENT. Section 11-13-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-13-16. When county auditor may call special election. Whenever the board of county commissioners fails or refuses to call a special election required by any law of this state, the county auditor may provide for and call such election upon the petition of a majority of the ~~legal voters~~ qualified electors of the county as determined by the poll list of the last preceding general election.

SECTION 22. AMENDMENT. Section 11-28.3-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.3-01. Territory to be organized - Petition. Whenever twenty percent of the qualified electors, as determined by the vote cast in the last preceding gubernatorial election, residing in any rural territory, equivalent in area to one township or more not presently served by an existing ambulance service, elect to form, organize, establish, equip, and maintain a rural ambulance service district, they shall signify their intention by presenting to the county auditor of the county or counties in which the territory is situated, a petition setting forth the desires and purposes of the petitioners. The petition shall contain the full names and post-office addresses of the petitioners, the suggested name of the proposed district, the area in square miles to be included therein, and a complete description according to government survey, wherever possible, of the boundaries of the real properties intended to be embraced in the proposed rural ambulance service district. A plat or map showing the suggested boundaries of the proposed district shall accompany the petition, and the petitioner shall also deposit with the county auditor a sum sufficient to defray the expense of publishing the notices required by sections 11-28.3-02 and 11-28.3-03. Provided further that any city located within the area, whether such city has ambulance service or not, may be included in the rural ambulance district if twenty percent or more of the qualified electors residing in the city sign the petition.

SECTION 23. AMENDMENT. Section 11-28.3-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.3-05. Notice by county auditor of meeting to organize district. If a rural ambulance service district is approved as provided in this chapter, the county auditor of the county in which the proposed

district is located shall issue notice of a public meeting to organize the rural ambulance service district. The notice shall be given by publication once a week for two consecutive weeks, the last notice appearing seven days before the date of the meeting in a newspaper of general circulation within the proposed district. The notice shall be addressed to all qualified electors residing within the boundaries of the district, shall describe the boundaries of the district, and shall state the date, time, and place of the meeting. If the district is located within two or more counties, the county auditors of the counties shall confer and set the date, time, and place of the meeting, and shall cause the publication of the meeting notice in each of said counties.

SECTION 24. AMENDMENT. Section 11-28.3-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.3-06. Organization - Board of directors. At the time and place fixed by the county auditor for the public meeting as provided in section 11-28.3-05, the qualified electors present who reside within the boundaries of the district shall proceed to organize the district. Permanent organization shall be effected by the election of a board of directors consisting of not less than five nor more than ten residents of the district. The board of directors shall meet as soon after the organizational meeting as possible to elect a president, a vice president, and a secretary-treasurer. All directors and officers shall be elected for two years and hold office until their successors have been elected and qualified, except that at the first election the vice president shall be elected as provided in this section for a one-year term, and one-half, or as close to one-half as possible depending upon the total number of directors, of the directors elected at the first election following the effective date of this section shall be selected by lot in the presence of a majority of such directors to serve one-year terms. All officers and directors shall serve without pay.

SECTION 25. AMENDMENT. Section 11-30-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-30-01. Counties may disorganize - Petition. Whenever the board of county commissioners of any county having a population of less than four thousand inhabitants ~~according to the last preceding official state or federal census shall be~~ petitioned so to do by twenty percent of the qualified electors of such county, as determined by the vote cast for the office of governor at the last preceding general election, such board shall submit to the qualified electors of the county the question of disorganization of the county. The question shall be submitted at the next statewide election occurring more than ninety days after the filing of such petition.

SECTION 26. AMENDMENT. Section 11-31-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-31-01.1. Election for creation or termination of office of county highway engineer. Upon the filing with the county auditor of a petition signed by not less than five percent of the qualified electors of the county as determined by the total number of votes cast in the last election, representing not less than seven percent of the voting precincts of the county, asking that an election be held on the question of the creation of the office of county highway engineer, the board of county commissioners shall submit the question at the next regular primary or general election. Notice of the election shall be given in the manner prescribed by law for the submission of questions to the qualified electors of a county under the general election law. If a majority of the votes cast on the question are in favor thereof, the office of county highway engineer shall be established and the board of county commissioners shall fill such office by appointment. The office so created shall not be terminated except upon the instruction of a majority of the qualified electors voting on the question in an election similarly held but any engineer appointed to fill such office may be removed from office by action of the board.

SECTION 27. AMENDMENT. Section 15-18-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-18-05. County levy to aid in the financing of residual or other fiscal obligations of a junior college or educational center authorized. The board of county commissioners of any county, or part of a county, in which a junior college or off-campus educational center of a state-supported institution of higher education has been established, or any county, or part of a county, adjacent thereto, may upon approval of the qualified electors of such county at a countywide election, levy a tax of not exceeding five mills upon all property in such county, to aid any special school district which maintained a junior college or off-campus educational center of a state-supported institution of higher education. The mill levy herein authorized shall be over and above any mill levy limitation provided by law, and shall be for the purpose of financing any residual or other fiscal obligations of the school district under the terms of an agreement between the district and the state board of higher education pursuant to section 15-10-01.1. At any time after the approval of such levy, upon petition of five percent of the qualified electors voting in the last preceding countywide election, the county commissioners shall submit the question of the continuance of such levy to the next countywide election, and if the majority of the qualified electors shall vote to discontinue such levy, the levy shall be discontinued in subsequent years.

SECTION 28. AMENDMENT. Section 15-20.2-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-20.2-13. Referendum on district participation in multidistrict center - Majority required for approval. A school district board shall not proceed to obtain approval as a participating district in a

multidistrict vocational education center if a petition for referendum of the question of said school district participating in a multidistrict vocational education center signed by twenty percent of the qualified voters 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 vocational education center until the question of whether the district shall enter into a multidistrict vocational education center has been submitted to the voters 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 vocational education center.

SECTION 29. AMENDMENT. Section 15-22-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-25. Two or more counties or parts thereof may have a common county superintendent of schools - Petition by electors and formulation of plan - Approval reinstatement. Whenever five percent of the qualified electors of a county or part thereof, as determined by the vote cast for the office of governor at the last general election at which such office was voted upon, shall sign and file a petition setting forth the areas with the county auditor of such county requesting that a county superintendent be elected by two or more contiguous counties or parts thereof to perform the functions of such office for such counties, the county auditor shall transmit a certified copy of such petition to the county auditors of the counties set forth in such petition. Upon receiving such petitions the boards of county commissioners of each county affected by said petition shall, either by joint action or upon a resolution passed by a majority of each board, formulate a plan for a county superintendent of schools to serve the counties or parts thereof designated by such plan. Alternatively, and without the need of receiving petitions, the board of county commissioners of any county may, by resolution, formulate a plan to discontinue the office of the superintendent of schools of the county or parts thereof and combine with another county or counties or parts thereof for the election of a county superintendent of schools to perform the functions of such office for the counties or parts thereof involved. The county superintendent of schools shall be elected for a term of four years and serve as the county superintendent of schools for the counties or parts thereof designated by such plan. In formulating such plan, the board of county commissioners shall consult with school board presidents and the other boards of county commissioners of counties or parts thereof affected by such plan. Such plan shall encompass all necessary provisions relating to location and sharing of costs of the office so established, and the boards of county commissioners shall be authorized to expend funds of the several counties or parts thereof pursuant to such plan. By joint action or upon a resolution passed by a majority of each board, the boards of county commissioners shall call a public hearing by publishing a notice in

the official newspaper in each county at least fourteen days prior to the date of hearing on the proposed plan. Pursuant to such public hearing such plan shall be submitted to the state board of public school education for approval or disapproval. Upon approval by the state board of public school education, the plan shall be submitted by the county auditor to a vote of the people qualified electors in each county or parts of a county at an election held prior to July first preceding the expiration of the current term of office of county superintendent of schools. If a majority of the votes cast in each county or parts of a county be in approval, the plan shall go into effect with the beginning of the next term of office for the county superintendent of schools, provided the remaining part or parts of the county are embraced in a similar plan with another county. The county auditor of each county or parts thereof shall place the office on the regular no-party ballot. The canvassing of votes, certifying of nominations, and certifying of elections for any county superintendent elected under the provisions of this section shall be carried out in the same manner as for candidates for the legislative assembly.

Whenever five percent of the qualified electors of the county or parts thereof, as determined by the vote cast for the office of governor at the last general election at which such office was voted upon, shall sign and file a petition with the county auditor of the county involved requesting that a separate county superintendent be elected by each county, or when directed by the joint action or by resolutions passed by a majority of each board involved, the county auditor of each county involved in the plan for a combined county superintendent of schools shall submit the plan to a vote of the people qualified electors in each county or parts of a county at an election held prior to July first preceding the expiration of the current term of office of the county superintendent of schools. If a majority of the votes cast in each county or parts of a county approves the plan, the plan shall remain in effect. If a majority of the votes cast in each county or parts of a county reject the plan, the plan shall be discontinued with the beginning of the next term of office for the county superintendent of schools and the office of county superintendent of schools shall be reinstated as it existed prior to formulation of the plan by the county commissioners.

* SECTION 30. AMENDMENT. Subsection 2 of section 15-28-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The number of school board members in any public school district may be increased to either five, seven, or nine or decreased to seven or five if a petition signed by at least one-third of the voters qualified electors of the school district as determined by the number of persons voting at the most recent annual school district election is filed with the school board asking for such change, and the change is approved by a majority of the voters qualified electors of the district voting at a special

* NOTE: Section 15-28-01 was also amended by section 5 of Senate Bill No. 2065, chapter 209.

election called for that purpose. If approved, the additional members shall be elected to the board at the next annual school district election in the same manner as other school board members. If the total number of board members after the increase is approved is five, two shall serve until the first annual election, two until the second annual election, and one until the third annual election thereafter. If the total number of board members after the increase is approved is seven, three shall serve until the first annual election, two until the second annual election, and two until the third annual election thereafter. If the total number of board members after the increase is approved is nine, three shall serve until the first annual election, three until the second annual election, and three until the third annual election thereafter. All such members shall serve for the terms prescribed above and until their successors are elected and qualified, and the length of the respective terms of those members elected as a result of the increase in membership of the board shall be determined by lot. In no event shall the length of any term which existed prior to the increase in membership and which is held by a member who has duly qualified, be modified by such determination. Terms subsequent to the first shall be for the normal term of three years, and until a successor is elected and qualified. School board members shall be elected at large, except that if the district in which they are elected has been reorganized under the provisions of chapter 15-53 or article III of chapter 15-53.1, such members may be elected either at large or by geographical area. In districts reorganized under the provisions of chapter 15-53 or article III of chapter 15-53.1, in which an increase in the membership of the board is proposed, the election on the reorganization plan shall take the place of the petition and election requirements of this subsection, and approval of the reorganization plan shall have the same effect as if the approval were by the election provided for in this subsection. Should a decrease to not less than five members be approved by the voters qualified electors voting, the excess number of members will serve out existing terms until the number approved by the voters qualified electors has been reached.

SECTION 31. AMENDMENT. Section 15-40.2-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-01. Transfer of pupils to other districts or institutions - Tuition agreements. The school board of any district may send kindergarten, elementary, or high school pupils into another school district or to an accredited institution of another state when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay

the tuition of such pupils to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to such other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from such other schools or institutions.

SECTION 32. AMENDMENT. Section 15-45-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-45-01. Establishing kindergartens - Election on mill levy. The school board of any school district may, upon its own motion, establish free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term. A school board which establishes free kindergartens may levy a tax pursuant to subdivision f of subsection 1 of section 57-15-14.3. On a petition signed by qualified electors of the school district comprising at least five percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, but in no case less than twenty-five qualified electors, the school board must submit the question of establishing a kindergarten program at the next annual or special school election. If the question of establishing a kindergarten program is placed on the ballot, that question must include a statement of any increase in the district's mill levy needed to finance the program. The question must be approved by the ~~district's~~ qualified electors of the district by the respective margins of electorate approval as provided for in section 57-15-14, and approval of the question constitutes elector approval of the additional mill levy necessary to finance the program.

SECTION 33. AMENDMENT. Section 15-47-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-43. Public school districts - Corporate powers - Corporate name - Name change. All school districts in the state of North Dakota, except the Fargo school district, are public school districts and shall be governed by the provisions of this title. Every public school district shall be a body corporate for school purposes and the name of such school district shall be substantially as follows:

"----- Public School District No. -----
of ----- County, State of North Dakota."

The school district shall possess all the powers and shall 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, and convey such real and personal property as shall come into its possession by will or otherwise. It may have a corporate seal by which its official acts may be attested. Whenever

in the judgment of the school board of any public school district it is deemed desirable to change the name of the school district, or whenever one-third of the qualified electors of the school district shall submit a petition requesting a change in the name of the school district, the school board shall submit the proposed name change at the next school election. Upon ratification of the proposed change of such name by a majority of the ballots cast on the question, the school district shall be renamed accordingly. The clerk of the school board of the district shall notify the county auditor, the county superintendent of schools, and the superintendent of public instruction of any change in the name of the district.

SECTION 34. AMENDMENT. Section 15-48-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-48-01. Petition for election - Authority of board. Whenever there shall be presented to, and filed with, the school board of any public school district, a petition, signed by at least one-third of the qualified electors of such school district, requesting that the school board submit to the qualified electors of the district the question of increasing the limit of indebtedness of such district five percent on the assessed value of the taxable property of said district beyond the five percent limit of indebtedness fixed by the constitution, the board must submit said question to the qualified electors at the next annual school election, or at a special election called in said district for that purpose, provided, that the board may submit said question to the qualified electors at a regular or special election on its own motion without such petition.

*** SECTION 35. AMENDMENT.** Section 15-53.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-53.1-05. Attachment of contiguous territory to school district - Petition. Territory contiguous to a public school district, whether in the same county or in another, may be attached to such school district by the county committee upon written application signed by two-thirds of the qualified electors in the contiguous territory after hearing and subject to the provisions of section 15-53.1-29. The sufficiency of the petition and the determination of the number of qualified electors necessary to constitute a two-thirds majority shall be determined by the county committee. As used in the words "territory contiguous" in this section, the word "territory" shall mean all or any portion or part of an organized school district, and the word "contiguous" shall mean any two or more tracts which are in actual contact at least to the extent of touching at a common corner.

**** SECTION 36. AMENDMENT.** Section 15-53.1-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

*** NOTE:** Section 15-53.1-05 was repealed by section 9 of Senate Bill No. 2065, chapter 209.

**** NOTE:** Section 15-53.1-16 was repealed by section 9 of Senate Bill No. 2065, chapter 209.

15-53.1-16. Public hearing on proposals for reorganization - Hearing testimony for adjusting. The county committee shall hold a public hearing on the advisability of any proposal by such committee for the reorganization of school districts which involves the formation of a new 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. Notice of hearings shall be given by publishing a notice in the official county newspaper at least fourteen days prior to the date of such hearing. If the county committee fails to call such hearing and to give the required public notice, a petition signed by twenty-five percent of the qualified electors in the area proposed to be included in the new school district and presented to the committee shall make it mandatory for a hearing to be called. The notice of such hearing shall be published within ten days after the date of filing of the petition, and shall set forth the date selected for the hearing, which shall not be more than twenty days after the date of publication. The county committee shall also hear at such time as may be fixed by it, testimony offered by any person or school district interested in any proposal of the county committee to form a new district, to transfer territory from one school district to another, or to attach to an established district or districts all or any part of another district subject to disorganization for any of the reasons now specified by law; such testimony and documentary evidence to be considered by the county committee with respect to any of the following factors:

1. The value and amount of all school property of whatever nature involved in the proposed action;
2. The nature, amount, and value of all bonded, warrant, and other indebtedness of each school district affected by the proposed action, including all unexecuted obligations with separate consideration given to the amount of outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements, and the location of such improvements in order that an equitable adjustment of all property, debts, and liabilities among the districts involved be made;
3. The taxable assessed valuation of the existing districts and the differences in such valuation which would accrue under a proposed reorganization;
4. The size, geographical features, and boundaries of the districts;
5. The number of pupils attending school and the population of the districts;
6. The location and condition of the districts' school buildings and their accessibility to affected pupils;

7. The location and condition of roads, highways, and natural barriers within the respective districts;
8. The school centers where children residing in the districts attend high school;
9. Conditions affecting the welfare of the teachers and pupils of the involved districts;
10. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts;
11. The educational needs of local communities in the involved districts;
12. An objective in economizing in the use of transportation and administrative services;
13. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts;
14. A reduction in disparities in per-pupil valuation between school districts and the objective of equalization of educational opportunities for pupils;
15. Any other relevant factors which, in the judgment of the county committee, are of importance.

Following the county committee's consideration of testimony and documentary evidence with respect to any of the factors listed in subsection 3, the county committee shall make specific findings with reference to every one of those factors to which testimony or documentary evidence was directed in proceedings before the committee.

The county committee 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 the same to the state board at the time of submitting a plan as provided in section 15-53.1-17. A subcommittee composed of not less than three members of a county committee, or three members of the county committee of each county concerned in case territory in two or more counties is involved, may hold any hearing that the county committee is required to hold.

* SECTION 37. AMENDMENT. Section 15-53.1-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-53.1-34. Sale or removal of school buildings in reorganized districts. On motion of the school board, or on petition of a majority of the qualified electors in an original school district included in a

* NOTE: Section 15-53.1-34 was repealed by section 9 of Senate Bill No. 2065, chapter 209.

reorganized district established in accordance with the provisions of this article, for the sale or removal of a schoolhouse in such district, the school board of the reorganized district may have the school building moved to the place designated in the petition, or sold if the petition so provides. The proceeds of such sale shall be placed in either the general fund or the building fund of the reorganized district, in the discretion of the school board. In the event such sale or removal is to a political subdivision of this state, it may be made for less than the fair market value of the school building upon motion unanimously approved by the school board.

*** SECTION 38. AMENDMENT.** Section 15-53.1-39 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-53.1-39. Changes in reorganization plan. At any time after the reorganization plan has become effective, any provision of the reorganization plan theretofore or thereafter adopted, including those affecting the adjustment of assets and liabilities but excepting those provisions defining the boundaries of the district, may be changed by a majority vote of the electorate qualified electors without approval of the state board or county committee. The school board in the reorganized district may, upon its own motion, or shall, upon the filing with it of a petition containing signed by a number of signatures qualified electors equal to at least one-third of the total number of votes cast qualified electors voting at the most recent school district election, submit the question of authorizing the change at the next regular or special election. The new election shall follow the election procedure provided in section 15-53.1-22 and shall involve the same geographic areas as were concerned with the original reorganization election. Electors Qualified electors within any territory which has been annexed to the reorganized district shall vote with either an incorporated area or unincorporated area depending on the status of the annexed area at the time of its annexation and as defined by section 15-53.1-22. If a majority of all votes cast by the qualified electors residing in each of the geographic areas are in favor of the proposed change, then the proposed change shall be effected.

**** SECTION 39. AMENDMENT.** Subsection 3 of section 16.1-01-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-01-09. Regulations governing initiative, referendum, or recall petitions.

3. A petition for recall must include, before the signature lines, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and residential mailing addresses of not less than five qualified electors of the state, county, or

*** NOTE:** Section 15-53.1-39 was repealed by section 9 of Senate Bill No. 2065, chapter 209.

**** NOTE:** Section 16.1-01-09 was also amended by section 1 of House Bill No. 1058, chapter 233, and amended by section 1 of House Bill No. 1057, chapter 234.

district in which the official is to be recalled who are sponsoring the recall.

SECTION 40. AMENDMENT. Section 16.1-01-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-01-12. Election offenses - Penalty. It shall be is unlawful for a person to:

1. Fraudulently alter another person's ballot or substitute one ballot for another, or to otherwise defraud a voter of his vote.
2. Obstruct ~~an~~ a qualified elector on the way to a polling place.
3. Vote or offer to vote more than once in any election.
4. Knowingly vote in the wrong election precinct or district.
5. Disobey the lawful command of an election officer as defined in chapter 16.1-05.
6. Knowingly exclude a qualified elector from voting, or knowingly allow an unqualified person to vote.
7. Knowingly vote when not qualified to do so.
8. Sign an initiative, referendum, recall, or any other election petition when not qualified to do so.
9. Sign a name other than his own name to an initiative, referendum, recall, or any other election petition.
10. Circulate an initiative, referendum, recall, or any other election petition not in its entirety, or circulate such a petition when unqualified to do so.
11. Willfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title.
12. Willfully violate any rule ~~or regulation promulgated~~ adopted by the secretary of state pursuant to this title.
13. Willfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the same to be false, or willfully deface, destroy, or conceal any statement or certificate entrusted to his care.

14. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law.

A violation of subsections 1 through 13 ~~shall be~~ is a class A misdemeanor. A violation of subsection 14 occurring after an election but before the final canvass, or during an election, ~~shall be~~ is a class C felony, and in other cases ~~shall be~~ is a class A misdemeanor.

Every act which by the provisions of this chapter is made criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to qualified electors to be decided by votes cast at an election.

SECTION 41. AMENDMENT. Subsection 4 of section 16.1-11-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Any other party, if a petition signed by at least seven thousand qualified electors of this state is filed with the secretary of state before four p.m. of the fifty-fifth day prior to a primary election, asking that a column be provided for such party, naming it, and stating the platform principles thereof. If such petition is mailed it shall be in the possession of the secretary of state before four p.m. on the fifty-fifth day. Candidates of such party shall be entitled to the same rights and privileges as those of other parties.

SECTION 42. AMENDMENT. Section 16.1-11-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-37. Vote required for nomination on no-party ballot - Partisan nominations prohibited. The number of persons to be nominated as candidates for any one no-party office shall be that number of persons who receive the highest number of votes and who total twice the number of available positions for the office, if that many persons are candidates for nomination. Provided, however, that no person shall be deemed nominated as a candidate for any no-party office at any primary election unless the number of votes received by him equals the number of signatures of qualified electors required to be obtained on a petition to have a candidate's name for the office placed on the primary ballot. No partisan nominations shall be made for any of the offices mentioned in section 16.1-11-08.

*** SECTION 43. AMENDMENT.** Subsection 5 of Section 16.1-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Signatures of qualified electors, ~~as defined in this title,~~ who reside in the state, district, or political

*** NOTE:** Section 16.1-12-02 was also amended by section 1 of Senate Bill No. 2147, chapter 244, and amended by section 1 of House Bill No. 1207, chapter 245.

subdivision. The signatures need not be appended to one paper, and each person signing shall add his mailing address and the date of signing. The signatures on the petition shall be in the following number:

- a. If the nomination is for an office to be filled by the qualified electors of the entire state, there shall be not less than one thousand signatures.
- b. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures shall be ten percent of the number of votes cast in the district for governor at the last preceding general election, but in no case shall more than three hundred signatures be required.

SECTION 44. AMENDMENT. Subsection 1 of section 16.1-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The following certificates of nomination shall be filed with the secretary of state, with written notice of that filing filed with the county auditor of each county included within the district wherein the offices are to be elected:
 - a. Certificates of nomination for nominees for offices to be filled by the qualified electors of the entire state.
 - b. Certificates of nominations for nominees for offices to be filled by the qualified electors of any district greater than a county.
 - c. Certificates of nomination for nominees for legislative offices.

*** SECTION 45. AMENDMENT.** Section 16.1-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-01. Election recounts. A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, or county office, or for the approval or disapproval of any measure or question submitted to the qualified electors of this state or one of its counties shall be conducted as follows:

1. The 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 less than two percent of the highest vote

*** NOTE:** Section 16.1-16-01 was also amended by section 11 of Senate Bill No. 2259, chapter 249, and amended by section 1 of Senate Bill No. 2324, chapter 251.

- cast for a candidate of his party for the office sought.
- b. Any person who failed to be elected in a general or special election by less than one-half of one percent of the highest vote cast for a candidate for that office.
 - c. Any person who files a petition signed by at least five qualified electors, when 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. The recount demand must be made within ten days after the canvass of the votes by the county canvassing board in the case of county elections, and by the state canvassing board in the case of congressional, state, district, or legislative elections. The demand shall be in writing, shall recite one of the conditions in subsection 1 as a basis for the recount, and shall be filed with:
 - a. The secretary of state when the recount is for a congressional, state, district, or legislative office or a question submitted to the qualified electors of the entire state.
 - b. The county auditor when the recount is for a county office or a question submitted to the qualified electors of a county.
 3. When the secretary of state receives a timely recount demand and finds it to be in the proper form, he shall immediately notify all the county auditors to conduct a recount as provided in this section. The secretary of state shall fix the date of statewide recounts. The date shall be within ten days after receipt of the recount demand. The county auditor shall determine the validity of recount demands filed with him and shall fix the date for recounts limited to his county. The date shall be within ten days after receipt of the recount demand. In all recount proceedings, the county auditor shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.
 4. Recounts shall be conducted by the county auditor who may employ up to four county qualified electors of the county to assist in the recount. The county auditor shall review all paper, machine, electronic voting system, and absentee ballots, whether or not the ballots were counted at the precinct or the county canvass, to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of

the county canvassing board. If the county auditor files a recount demand, he shall be disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section.

5. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. ~~An~~ A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor shall count the challenged ballot as he deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor shall submit all challenged ballots to the recount board for decision. The recount board shall be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. No person shall serve on the recount board if he would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the county commission who would be qualified to serve on the board shall appoint disinterested qualified electors of the county to serve as alternates. The recount board shall review all challenged ballots, and on majority vote shall decide how they shall be counted. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter.

6. The county auditor shall certify the results of the recount no later than fifteen days after the filing of the recount demand. The recount result shall become the official result of the election in the county. The county auditor shall prepare a corrected abstract of the votes. In a recount limited to the county, if the corrected abstract shows no change in the outcome of the election, no further action shall be taken. If the corrected abstract changes the outcome of the election, the county auditor shall issue certificates of nomination or election accordingly, and shall certify the new result of a question submitted to the ~~electorate~~ qualified electors.

7. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than fifteen days after the filing of the recount demand, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the electorate qualified electors accordingly.
8. The expenses incurred in a recount of a county election shall be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a congressional, state, or legislative election shall be paid by the state from the general fund, upon approval by the secretary of state of a statement of expenses received from the county auditors.
9. The results of any recount of votes cast in an election of a member of the legislative assembly shall be admissible in either house of the legislative assembly, or before a committee of either house, as evidence to aid in the determination of an election contest pending in that house.

SECTION 46. AMENDMENT. Section 18-06-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-06-11. Contracts for fire protection in unorganized townships - Mill levy. Upon the petition of a majority of the qualified electors in one or more unorganized townships or in school districts comprising unorganized townships, the board of county commissioners shall have authority to execute contracts with any incorporated municipality, rural fire protection districts, or rural fire departments of this or adjacent states to provide for the prevention of, the protection from, and the extinguishment of fires within such unorganized townships or districts in such manner as may be agreed upon by the board of county commissioners and the governing body of the municipality contracting to perform such services. The board of county commissioners is further authorized to levy a sum sufficient for the reimbursement of municipalities performing such services upon all taxable property within the unorganized townships or school district comprising unorganized townships for which such fire protection service is provided. The mill levy provided herein shall be over and above any mill levy limitation provided by law and shall be collected and paid as other county taxes are collected and paid. The proceeds of such tax shall be placed by the county treasurer in a special fund for the reimbursement of the municipality providing fire protection service to the unorganized townships or districts from which the tax is collected, and shall be disbursed upon the order of the board of county commissioners.

SECTION 47. AMENDMENT. Section 18-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-10-01. Territory to be annexed - Petition. Whenever sixty percent of the freeholders residing in any rural territory, equivalent in area to one township or more, elects to form, organize, establish, equip, and maintain a rural fire protection district, they shall signify such intention by presenting to the county auditor of the county or counties in which such territory is situated, a petition setting forth the desires and purposes of such petitioners. Such petition shall contain the full names and post-office addresses of such petitioners; the suggested name of the proposed district, the area in square miles [kilometers] to be included therein, and a complete description according to government survey, wherever possible, of the boundaries of the real properties intended to be embraced in the proposed rural fire protection district. The petitioners shall also present to the county auditor a plat or map showing the suggested boundaries of the proposed district, and shall deposit with the county auditor a sum sufficient to defray the expense of publishing the notices required by sections 18-10-02 and 18-10-03. Provided, further, that any city located within the area, whether such city has a fire department or not, may be included in the rural fire district if sixty percent or more of the qualified electors residing therein sign such petition.

SECTION 48. AMENDMENT. Subsections 2 and 3 of section 18-10-11 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The proceedings for the annexation, referred to in subsection 1, may be initiated by the presentation to the auditor of a petition signed by sixty percent or more of the qualified electors who are owners of any interest in real or personal property assessed for taxation in the territory to be annexed and who are residing within the boundaries of such territory stating the desires and purposes of such petitioners. The petition shall contain a description of the boundaries of the territory proposed to be annexed. It shall be accompanied by a map or plat and a deposit for publication costs.
3. The county auditor shall consult the tax schedules in the office of the county auditor and determine and certify whether or not such petition complies with the requirements of subsection 2 and that the persons qualified electors signing the same appear to reside within the boundaries described by such petition. Thereafter, the county auditor shall forward such petition, map or plat, and certificate to the board of directors of the district concerned.

SECTION 49. AMENDMENT. Section 21-03-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-10. Initial resolution - How adopted. The initial resolution may be:

1. Adopted by a majority vote of the governing body at any regular meeting thereof or at any special meeting of which notice has been given as required by law, without any previous action thereon or request therefor by the voters qualified electors or property owners.
2. Proposed by filing a copy thereof in the office of the auditor or secretary of the municipality, together with a petition signed by legal voters qualified electors of the municipality aggregating in number one-fourth of the number of legal voters qualified electors of the municipality, as shown by the pollbook for the last preceding annual or general election held therein, or if such pollbook was not kept, then as shown by a census of the voters qualified electors of such municipality verified by the affidavit of one of such petitioners. Such petition shall ask that an election on the question of issuing such bonds be called. Upon the filing of such proposed initial resolution and petition, the governing body shall call such election in the manner specified by section 21-03-11.

SECTION 50. AMENDMENT. Section 21-03-10.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-10.1. School districts - Use of bond funds.

1. The initial resolution or petition providing for the issuance of bonds, whether adopted by a majority vote of the school board of a school district or proposed by the voters qualified electors of the school district as provided for in section 21-03-10, may, within the discretion of those proposing such initial resolution or petition, provide for a specific school plan for which the proceeds of the bond issue shall be exclusively used except as otherwise provided in section 21-03-42. Such plan shall designate the general area to be served by expenditure of bond proceeds for school purposes. The area intended to be served shall be described in the plan, but need not be described in the bond election ballot.
2. The bond election ballot form authorized in section 21-03-13 shall be sufficient. After approval of the initial resolution by the number of qualified electors required by section 21-03-07, the proceeds of the bond issue shall be used only for the purpose and in the manner designated by the school plan except as herein provided.
3. After approval of the bond issue, no change shall be made in the purpose of expenditure of the bond proceeds except

that, upon a favorable vote of sixty percent of the qualified electors residing in any specific area intended to be served as provided in subsection 1, material changes may be made in such plan as it affects said area to the extent such changes do not conflict with contractual obligations incurred.

SECTION 51. AMENDMENT. Section 21-03-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-11. Elections - When and how called and held. Upon or after the adoption of an initial resolution by the governing body, or at the first meeting of the governing body held after the filing of a petition and proposed initial resolution by the voters qualified electors as specified in subsection 2 of section 21-03-10, subsection 2; the governing body by resolution shall provide for submitting to the qualified voters electors of the municipality the question whether such initial resolution shall be approved. The date of such election shall be not less than twenty days after the passage of such initial resolution by the governing body or in the filing of a sufficient petition therefor by the voters qualified electors. The governing body shall designate the date of such election, the polling hours, and polling place thereof, which shall be the same as for municipal elections therein, and shall appoint an inspector, two judges, and two clerks of election for each polling place. In case of the absence of any such official of election, or his inability to act at the opening of the polls, the remaining election officials for the precinct shall appoint a qualified voter elector to fill such vacancy. Such election shall be conducted and the returns thereof made and canvassed as in the case of elections of members of the governing body of such municipality.

SECTION 52. AMENDMENT. Section 23-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-01. Formation of health districts. When in the opinion of the state health officer, on information obtained in cooperation with local officers and boards, the health needs of any given area may be better served by the formation of a health district, as hereinafter provided, the state health officer shall so notify the county auditor of each county involved and the city auditor of each city having a population in excess of fifteen thousand persons. Each county auditor and city auditor must place the matter before the governing board of the county or city at its next regular meeting, and the governing board by resolution either must adopt or reject the plan at the same or the first subsequent meeting. If resolutions are adopted by the governing boards of the cities and counties as hereinbefore provided, adopting the health district plan, all laws and parts of laws in conflict therewith automatically shall become inoperative throughout the territory embraced within the district, and particularly the laws relative to city, township, and county boards of health. If the board of county commissioners of any county or the city council or city commission of any city, rejects the plan, it may submit the question of adoption of the

provisions of this chapter to the qualified electors of the county or city at the next ensuing general or special election to be held in said county or city. In all elections held under ~~the provisions~~ of this chapter the votes cast in the cities having a population in excess of fifteen thousand inhabitants shall be considered separate and apart from the votes cast elsewhere in the county, and the participation in the health district by any city shall be governed by the votes cast in the city as distinguished from the vote cast elsewhere in the county. If a majority of the qualified electors vote in favor of the adoption of the provisions of this chapter, the board of county commissioners, within ten days after the canvass of said election, shall adopt such resolution, and, upon the adoption of such resolution such county or counties, together with the cities voting in favor of the plan, shall be considered a district health unit or health district. On a petition filed with the county auditor containing names of qualified electors of the county equal to ten percent of the votes cast for the office of governor at the last general election, an election on the question of forming a health district shall be held as heretofore provided. The health districts shall follow county lines, and in case the district as outlined by the state health officer includes more than one county, and the plan is adopted in any of said counties or cities, and rejected in any one or more of the other counties or cities, it shall become effective in the county or counties and city or cities adopting the plan, if in the exercise of his discretion the state health officer deems the same operative.

SECTION 53. AMENDMENT. Section 23-14-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-13. Dissolution. After a district health unit organized as provided in this chapter has been in operation for two years, the same may be dissolved in the following manner: On a petition filed with the county auditor containing names of qualified electors of the county equal to ten percent of the votes cast for governor at the last general election, an election on the question of dissolution shall be presented to the ~~people~~ qualified electors at the next general or special election held in the county. If a majority of the votes cast favor dissolution, the health unit shall be dissolved on July first following the election. If a majority of the votes cast are against dissolution, no other election shall be held until a period of two years has again expired.

SECTION 54. AMENDMENT. Section 23-18.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-18.2-03. Creation of nursing home authority by election. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a nursing home authority is presented to the board of county commissioners, the board of county commissioners shall submit the question to the

qualified electors of the county at the next countywide election. Upon approval by sixty percent of the votes cast, the board of county commissioners shall establish a county nursing home authority as described in sections 23-18.2-03 through 23-18.2-07 with all its powers, including the powers to issue bonds and certify a tax levy as described in sections 23-18.2-16 and 23-18.2-12, respectively.

SECTION 55. AMENDMENT. Subsections 1 and 2 of section 23-30-02 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read 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 ~~eligible voters~~ qualified electors, 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 ~~voters~~ qualified electors at a special election or the next regularly scheduled primary or general election as to whether or not the ~~voters~~ 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 ~~voters~~ 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.
2. In the event the qualified electors of a hospital district desire to dissolve such district, thirty percent of the ~~eligible voters~~ qualified electors, determined as in subsection 1, may petition the board of directors of the hospital district to place the question of the continued existence of the hospital district before the qualified electors of the district at the next regularly scheduled primary or general election. If at least sixty percent of the ~~persons~~ qualified electors voting in such election do not approve of the continued operation of the hospital district, the board of directors shall notify the county commission or county commissions, as the case may be. The county commission or county commissions shall, upon receipt of such notice, by resolution order the dissolution of the hospital district. Mill levies previously authorized shall continue to be collected as authorized until the termination of the authority therefor.

SECTION 56. AMENDMENT. Section 23-30-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-30-11. Territory to be annexed.

1. Any territory which is adjacent to the boundary of an existing hospital district may be annexed to such district in the manner hereinafter provided.
2. The proceedings for the annexation, referred to in subsection 1, may be initiated by the presentation to the county auditor of a petition signed by thirty percent or more of the qualified electors who are owners of any interest in real property assessed for taxation in the territory to be annexed and who are residing within the boundaries of such territory stating the desires and purposes of such petitioners. The petition shall contain a description of the boundaries of the territory proposed to be annexed. It shall be accompanied by a map or plat and a deposit for publication costs.
3. The county auditor shall consult the tax schedules in his office and determine and certify whether or not such petition complies with the requirements of subsection 2 and that the ~~persons~~ qualified electors signing the same appear to reside within the boundaries described by such petition. Thereafter, the county auditor shall forward such petition, map or plat, and certificate to the board of directors of the district concerned.
4. Within thirty days after receiving the petition, map or plat, and certificate of the county auditor, in accordance with subsection 3, from the county auditor, such board of directors shall transmit the same to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part.
5. If the report of the board of directors, referred to in subsection 4, disapproves the proposal, the petition shall be rejected. If the report is favorable to such proposal, either in whole or in part, the board of county commissioners shall give notice of election in the manner prescribed by section 23-30-03 and submit the question to the ~~voters~~ qualified electors at the next regularly scheduled primary or general election as to whether or not the ~~voters~~ qualified electors of the proposed area desire to be annexed and whether they approve of the mill levy authorized by section 23-30-07 for the purpose of supporting such hospital district. If at least sixty percent of the ~~voters~~ qualified electors voting in the election within the territory proposed to be annexed approve, the territory shall become a part of the existing hospital district.

SECTION 57. AMENDMENT. Section 24-05-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-05-01. County road tax - Allocation and use of funds. In each county having a population of two thousand or more, there shall be levied and collected a property tax of not less than one-fourth of one mill, nor more than the maximum rate permitted by section 57-15-06, on each dollar of the taxable valuation of all taxable property in the county for the improvement of highways. When authorized by sixty percent of the qualified electors voting upon the question at a regular or special election in the county, the county commissioners may levy and collect a property tax not exceeding the limitation in subsection 14 of section 57-15-06.7. The levy pursuant to such an election may be discontinued at the discretion of the county commissioners; or, upon petition of five percent of the qualified electors of such county, the question of discontinuance of the levy shall be submitted to the qualified electors of the county at any regular or special election and, upon a favorable vote of sixty percent of the qualified electors voting, such levy shall be discontinued. Of the proceeds of the tax collected on account of property situated within any city, by the county treasurer of the county in which the city is located, twenty percent shall be turned over by the treasurer to the auditor of the city, in the manner provided in section 11-13-06 to be expended under the direction of the governing body of the city in the improvement of its streets and highways. All other proceeds of the tax shall be kept in a distinct fund to be known as the "county road fund" and shall be expended in the improvement of highways as provided in this chapter under the direction of the board of county commissioners. The provisions of this section in regard to allocation shall apply to the proceeds of any tax originally levied for other purposes if appropriated or transferred to the county road fund or for expenditure for road and bridge purposes. No allocation pursuant to this section shall include the proceeds received by the county as its share of the allocation made pursuant to section 54-27-19, nor shall any allocation under this section include moneys received from the state as the result of any other intergovernmental transfer.

SECTION 58. AMENDMENT. Section 24-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-05. Petition for laying out, altering, or discontinuing roads. The board having jurisdiction as provided in this chapter may alter or discontinue any road or lay out any new road upon the petition of not less than six legal veterans qualified electors who own real estate, or who occupy real estate under the homestead laws of the United States, or under contract from this state, have an ownership interest in real estate in the vicinity of the road to be altered, discontinued, or laid out. Said petition shall set forth in writing a description of the road and what part thereof is to be altered or discontinued, and if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate.

SECTION 59. AMENDMENT. Section 24-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-11. When notice dispensed with. In cases where at least seventy percent of the legal voters qualified electors who are owners or part owners of land bordering on any existing or proposed road or highway shall have signed the original petition and thereby released all their claims to damages arising from altering, discontinuing, or laying out such road or highway, it shall not be necessary to post copies of the petition as provided for in section 24-07-09, nor to post notices or serve notices as provided for in section 24-07-10, except that the notices must be served personally or left at the abode of such occupants as may have failed to sign the petition and whose land borders on the road or highway proposed to be opened, altered, or discontinued. The general knowledge, and the fact, that seventy percent of the legal voters shall qualified electors have signed the original petition in compliance with this provision shall be deemed sufficient notice to all concerned and for all intents and purposes.

SECTION 60. AMENDMENT. Section 24-07-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-13. Examination of proposed highway. The board having jurisdiction, upon being satisfied that copies of the petition have been posted and notices have been served and posted as required, or that at least seventy percent of the legal voters qualified electors who are owners of lands affected have signed the original petition and that notices have been served personally or left at the abode of those who may have failed to sign the original petition, proof of which shall be shown by affidavit, shall proceed to examine the proposed highway and shall hear any reasons for or against the laying out, altering, or discontinuing of the same, and shall decide upon the application as it deems proper.

* **SECTION 61. AMENDMENT.** Subsection 3 of section 32-28-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. That two-thirds of the legal voters qualified electors of such city, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, have signed such petition expressing their desire that such change of name be granted.

SECTION 62. AMENDMENT. Section 40-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-05. Petition for incorporation - Contents - Census and survey to accompany - Hearing - Notice. A petition for the incorporation of a municipality under this chapter shall be addressed to the board of county commissioners of the county in which the proposed municipality is located and if such municipality is located in more than one county, to the board of county commissioners of the county

* **NOTE:** Section 32-28-03 was also amended by section 19 of Senate Bill No. 2275, chapter 337.

wherein the greater part of the territory is situated, and shall be signed by not less than one-third of the qualified electors residing within the territory described in such petition, and by the owners of not less than fifty percent in assessed value of the property located within the territory described in such petition.

1. The petition shall show:
 - a. The boundaries of the proposed municipality, and the assessed valuation of all property located within such boundaries.
 - b. The number of inhabitants residing within such boundaries.
 - c. The name of the proposed municipality, which shall be different from that of every other municipality in this state.
 - d. A request that the question of incorporating the territory described in the petition as a city under the council form of government or a city under the commission system of government, as the case may be, be submitted to the qualified voters electors residing within the territory.
2. The petition, when submitted, shall be accompanied by:
 - a. An incorporation plan showing how municipal services, including fire and police protection, street construction and maintenance, sewers, water, garbage disposal, planning, zoning, accounting, assessment, financing, and legal services, will be provided; and
 - b. Any other information that may reasonably be required by the board of county commissioners to whom the petition is addressed including, but not limited to, population, population density, per capita assessed valuation, proximity to populated areas, likelihood of significant growth, need for services, present cost and adequacy of services, and effect of proposed action and alternative actions on adjacent areas.

The petition shall be filed in the office of the county auditor, accompanied by a verified copy of the census required under this chapter and by a duplicate map of the survey of the proposed municipality, and shall be submitted to the board of county commissioners at the time indicated in the notice described in section 40-02-04 or as soon thereafter as the board can receive and consider the same. The board of county commissioners to whom the petition is addressed shall designate a time and place for consideration of the petition and shall notify the petitioners of that time and place. The petitioners shall then cause a notice containing the substance of the petition, and the time and place it

will be heard, to be published once a week for two consecutive weeks in the official county newspaper or newspapers of the county or counties and in other newspapers as deemed appropriate by the board of county commissioners of each county embracing the territory to be incorporated.

SECTION 63. AMENDMENT. Section 40-03.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-03.1-01. Change from council system of government - Petition required. Any city which shall have operated for more than six years since the adoption of the city council system of government or since the last election at which the question of changing from the council system was rejected by the voters a vote of the qualified electors, may change its organization thereunder and adopt the city commission form of government. The proceeding to change shall be initiated by a petition asking for such change signed by not less than forty percent of the qualified electors of the city. For the purpose of this section the term "qualified electors of the city" means, as determined by the total number of qualified electors voting at the preceding general election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such 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 contain the name, address, and age of each petitioner, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

SECTION 64. AMENDMENT. Section 40-03.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-03.1-02. City auditor to pass on sufficiency of petition. Within thirty days after a petition to change from the council system of government 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 signers electors. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient, his certificate shall show the reason for such 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, and if his certificate shows such amended petition to be insufficient, the petition shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same with his certificate before the governing body of the municipality.

SECTION 65. AMENDMENT. Section 40-03.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-03.2-01. Change from council system of government - Petition required. Any city incorporated as a city under the council form of government may change its organization thereunder and adopt the modern council form of government. The proceeding to change shall be initiated by a petition asking for such change signed by not less than one-third of the qualified electors of the city. For the purpose of this section the term "qualified electors of the city" means the total number of qualified electors voting at the preceding general election of the city. The signatures to such petition need not be contained in a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such 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 contain the address of each petitioner, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

SECTION 66. AMENDMENT. Section 40-03.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-03.2-02. City auditor to pass on sufficiency of petition. Within thirty days after a petition to change from the council system of government 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 signers electors. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient his certificate shall show the reason for such 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, and if his certificate shows such amended petition to be insufficient, the petition shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same with his certificate before the governing body of the municipality.

SECTION 67. AMENDMENT. Section 40-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-01. Incorporation as commission city. Any city in this state having a population of not less than five hundred inhabitants may become incorporated as a city under the commission system of government in the following manner: whenever one-tenth of the qualified electors of such municipality, based upon the votes cast for the office of governor at the last preceding general election, shall petition the governing body of such municipality to submit to

a vote of the qualified electors the question whether such city shall become incorporated as a city under the commission system of government, the governing body shall submit such question to the qualified electors, appoint a time when and place or places where the election shall be held, and designate the judges and clerks at such election. Such question shall not be submitted more than once in every four years.

SECTION 68. AMENDMENT. Section 40-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-08. Change from or reversion to commission system of government - Petition required. Any city which shall have operated for more than six years under or since changing from the city commission system of government may change its governmental organization and adopt the city council form of government or the modern council form of government or revert to the city commission form of government. The proceeding to change or revert shall be initiated either by a resolution by the governing body or by a petition asking for such change signed by not less than twenty-five percent of the qualified electors of the city. In no event, however, shall the petition contain less than thirty signatures. In any city having six or more municipal election precincts, not more than twenty percent of the petitioners may reside in any single precinct. For the purpose of this section the term "qualified electors of the city" means the total number of qualified electors voting for the office of the chief executive officer of the city at the preceding city election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be and that such person purports to be not less than eighteen years of age and a resident of the city. Each petition, in addition to the names of the signers, shall contain the name of the street upon and the number of the house in which each petitioner resides. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed. If the proceeding to change from or revert to a commission system of government is initiated by petition, the question may not be placed on the ballot more often than every four years.

SECTION 69. AMENDMENT. Section 40-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-09. City auditor to pass on sufficiency of petition to change from commission system of government. Within thirty days after a petition to change from the commission system of government is filed, the city auditor shall examine the petition and ascertain whether or not the petition is signed by the required number of signers qualified electors. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient his certificate shall show the reason for such 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, and if his certificate shows such amended petition to be insufficient, it shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same, with his certificate, before the governing body of the municipality.

SECTION 70. AMENDMENT. Section 40-05.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05.1-02. Methods of proposing home rule charter. The governing body of any city may on its own motion cause a home rule charter to be framed and submitted for adoption to the qualified electors of the city in the manner provided in this chapter, or such proposal may be made in a petition filed with the governing body and signed by not less than fifteen percent of the qualified electors of the city voting in the last city election.

SECTION 71. AMENDMENT. Section 40-08-03 of the North Dakota Century Code is hereby amended and reenacted to read 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 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 and mayor organization upon approval by a majority vote at a special election called pursuant to the procedure hereinafter provided.

~~The population of the cities shall be determined by the last official federal, state, or municipal census.~~ 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.

SECTION 72. AMENDMENT. Section 40-08-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-03.1. Change to ten aldermen 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 and mayor. The proceeding to change shall be initiated by a petition asking for such change signed by not less than one-third of the qualified electors of the city. ~~For the purpose of this section the term "qualified electors of the city" means as determined by the total number of qualified electors voting at the preceding general election.~~ The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such 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 contain the name, address, and age of each petitioner, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

SECTION 73. AMENDMENT. Section 40-08-03.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-03.2. City auditor to pass on sufficiency of petition requesting change to ten aldermen and mayor. Within thirty days after a petition to change to ten aldermen 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 signers electors. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient his certificate shall show the reason for such 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, and if his certificate shows such amended petition to be insufficient, the petition shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same with his certificate before the governing body of the municipality.

SECTION 74. AMENDMENT. Section 40-08-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-08. Vacancies on council - How filled. If a vacancy occurs in the office of alderman by death, resignation, or otherwise, the city council may call a special city election to fill such vacancy for the unexpired term, or may, after fifteen days of the date of such vacancy appoint a person from the ward in which the alderman previously holding was elected or appointed to fill such vacancy until the next city election, at which election the unexpired term shall be filled. Upon petition of five percent of the qualified electors of such ward, as determined by the total number of votes cast in such 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 petition has been submitted within fifteen days and before four p.m. of the fifteenth day of the date of such vacancy. If the petition is mailed it shall be in the possession of the council or its representative before four p.m. on the fifteenth day after the vacancy occurs.

SECTION 75. AMENDMENT. Section 40-08-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-16. Vacancy in office of mayor - Filled by election or by council - President of council to be acting mayor. If a vacancy occurs in the office of mayor, the city council may call a special city election to fill such vacancy for the unexpired term or may, after fifteen days from the date of such vacancy, elect one of its members to act as mayor, the member so elected shall possess all the rights and powers of the mayor until the next election and until a mayor is elected and qualified. Upon petition of five percent of the qualified electors, as determined by the total number of votes cast in the city in the last general election, the council shall call a special election to fill a vacancy occurring more than six months prior to the next city election, provided such petition is submitted within fifteen days of the date of such vacancy. During the interim between the date when a vacancy occurs in the office of mayor and election and qualification of a successor, the president of the city council shall be the acting mayor.

SECTION 76. AMENDMENT. Section 40-09-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-09-10. How vacancies in board filled. If a vacancy occurs in the office of a city commissioner or president of the board of city commissioners, the board may call a special city election to fill such vacancy for the unexpired term, or may, after fifteen days from the date of such vacancy appoint a person to fill such vacancy until the next city election, at which election the unexpired term shall be filled. Upon petition of five percent of the qualified electors, as determined by the total number of votes cast in the city in the last general election, the commission shall call a special city election to fill a vacancy occurring more than six months prior to the next city election, provided such petition has been submitted within fifteen days of the date of such vacancy.

SECTION 77. AMENDMENT. Section 40-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-10-01. Petition for city manager - Contents - Notice of election - Election. Twenty-five percent or more of the qualified electors of a city, as shown by the number of votes cast for the executive officer of the city at the preceding city election, may petition for the city manager plan of government. Within thirty days after such petition is filed with the city auditor, the governing body of the city shall provide for the submission of such proposal to the voters qualified electors of the city at an election to be held within ninety days after such filing. The city auditor shall give thirty days' notice of the date of the election and of the purposes thereof. The notice of election shall state briefly the powers of the city manager if the plan should be adopted. The election shall be held, the votes canvassed, and the results declared in the same manner as in the case of city elections.

SECTION 78. AMENDMENT. Section 40-10-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-10-08. Election to determine question of retention of city manager plan - Procedure thereafter. At any time after the city manager plan has been in force in any city for a period of five years or more, the governing body of the city may submit at any regular election the question of whether or not such plan shall be retained. If a petition signed by forty percent or more of the qualified electors of the city as shown by the votes cast for the executive officer at the preceding city election, requesting the submission of such question is filed with the city auditor, the governing body shall submit such proposal to the voters qualified electors of the city at an election to be held within ninety days after the filing of such petition. The signatures to such petition need not be appended to a single paper, but each single paper so used shall clearly state the purpose of the petition at the top of the paper, and each signature shall have been placed thereon not more than ninety days prior to the date on which the petition is filed in the office of the city auditor. Upon each paper one of the signers to qualified electors signing such petition shall, under oath before an officer competent to administer oaths, swear that he witnessed the signing of each signature appearing on such paper and that each signature appearing upon such 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 contain the name of the street and the number of the house in which each petitioner resides, the length of his residence in the state of North Dakota, the length of his residence in the city, and the date on which the petitioner signed the petition. Any petitioner shall be permitted to withdraw his name from a petition at any time prior to action by the governing body calling the election as provided herein. Such question shall not be submitted more than once in every five years. If a majority of the votes cast at the election shall be against retaining the city manager plan, the city shall revert to the plan in force previous to the adoption of the city manager plan, and the provisions of this chapter shall

not be applicable to such city except after another compliance with its terms. The governing body shall fix the date, not less than three months nor more than six months after an election at which the majority vote is against the retention of the city manager plan, when such plan shall cease to be operative in the municipality.

SECTION 79. AMENDMENT. Section 40-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-12-02. Submission of proposed ordinance by petition - Filed with city auditor - Request in petition. Any proposed ordinance may be submitted to the governing body of the municipality by a petition signed by qualified electors thereof equal in number to fifteen percent of the votes cast for all candidates for the executive officer at the preceding regular municipal election. The petition shall be filed in the city auditor's office, and shall contain a request that the ordinance set out in the petition be submitted to a vote of the qualified electors of the city if it is not passed by the governing body of the municipality.

SECTION 80. AMENDMENT. Section 40-12-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-12-05. City auditor to determine sufficiency of initiative petition - Certificate attached to petition. Within ten days after the filing of a petition to initiate an ordinance, the city auditor shall examine the petition and ascertain from the voters' register whether or not the petition is signed by the requisite number of qualified electors. The governing body of the municipality shall allow such extra help for the examination of the petition as it deems necessary. The city auditor shall attach to the petition his certificate showing the result of the examination and if the petition is insufficient he shall state in his certificate the reasons therefor. If the city auditor's certificate shows the petition to be insufficient, it may be amended within ten days from the date of the certificate. Within ten days after any such amendment, the city auditor shall make an examination of the amended petition, and if his certificate attached thereto shall show the amended petition to be insufficient, it shall be returned to the person filing the same without prejudice to the filing of a new petition to the same effect. If the petition is sufficient, the city auditor shall submit it to the governing body of the municipality without delay.

SECTION 81. AMENDMENT. Subsections 2 and 3 of section 40-12-06 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Call a special election, unless a general city election is fixed within ninety days thereafter, and submit to the vote of the qualified electors of the municipality the initiated ordinance without alteration; or

3. If the petition is signed by not less than twenty-five percent of the qualified electors as defined in section 40-12-02, pass the ordinance without change within twenty days after the filing of the petition or submit the initiated ordinance at the next general municipal election, if the election occurs not more than thirty days after the city auditor's certificate of sufficiency is attached to the petition, and if no general municipal election is to be held within thirty days after the city auditor's certificate of sufficiency is attached to the petition, it shall call a special election.

SECTION 82. AMENDMENT. Section 40-12-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-12-08. Petition to refer ordinance - Suspension of ordinance - Requirements of petition. An ordinance which has been adopted by the governing body of a municipality may be referred to the qualified electors of the municipality by a petition protesting against such ordinance. Such petition shall be signed by qualified electors of the municipality equal to at least ten percent of the entire vote cast for all candidates for executive officer of the municipality at the preceding regular municipal election, and shall be presented to the governing body of the municipality within ten days and before four p.m. on the tenth day after the ordinance described in the petition became effective. If a petition is mailed to the governing body of the municipality it shall be in the possession of such body before four p.m. on the tenth day after the ordinance became effective. Unless the ordinance protested against was passed by a four-fifths vote of the members of the governing body of the municipality for the immediate preservation of the public peace, health, and safety and contains a statement of its urgency, it shall be suspended upon the filing of the petition. The petition provided for in this section shall be in all respects in accordance with the provisions of sections 40-12-02, 40-12-03, and 40-12-04, except as to the number of signers required, and shall be examined and certified by the city auditor in all respects as provided in section 40-12-05.

SECTION 83. AMENDMENT. Section 40-12-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-12-09. Referred measure - Submission - Result of election. When a referendum petition is filed, the governing body of the municipality shall reconsider the ordinance described therein, and if it is not entirely repealed, the governing body shall submit it to the vote of the qualified electors of the municipality at the next regular municipal election or at a special election to be called for that purpose as provided in section 40-12-06. The ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. If the referred ordinance was not suspended by the filing of the referendum petition, it no longer shall be effective if it is disapproved by a majority vote of the qualified electors voting on the same.

SECTION 84. AMENDMENT. Section 40-21-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-21-07. Petition for nomination of elective official in municipalities - 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 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. Signers of Qualified electors who sign a petition shall reside within the ward or precinct in and for which such 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 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 more than three hundred signatures be required, and such signatures may be on separate sheets of paper. Each signer of qualified elector who signs such petition shall add to his name his mailing address.

SECTION 85. AMENDMENT. Section 40-37-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-37-02. Authority for levy initiated by petition - Signatures - Filing - Question submitted to electors. The authority for making a tax levy for municipal band purposes shall be initiated by a petition signed by at least ten percent of the qualified electors of the municipality as determined by the number of votes cast at the last regular municipal election. The petition shall be filed with the governing body and shall request that the following question be submitted to the qualified electors:

Shall a tax of not exceeding ----- mills (specifying the rate) be levied each year for the purpose of furnishing a band fund?

When such petition is filed, the governing body shall cause the question to be submitted to the qualified electors at the first following general municipal election.

SECTION 86. AMENDMENT. Section 40-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-38-01. Public library and reading room - Establishment - Election. The governing body of any city or county upon petition of not less than fifty-one percent of the ~~voters~~ qualified electors of the city or county as determined by the total number of votes cast at the last general election or upon a majority vote of the qualified electors thereof shall establish and maintain public library service within its geographic limits by means of a public library and reading room or other public library service, either singly or in

cooperation with the state library, or with one or more cities or counties, or by participation in an approved state plan for rendering public library service under the Library Services and Construction Act [20 U.S.C. 351-358], and acts amendatory thereof. Such question shall be submitted to the qualified electors upon resolution of the governing body or upon the petition of not less than twenty-five percent of that number of qualified electors of the city or county that voted at the last general election, filed with the governing body not less than sixty days before the next regular election. Library service may be discontinued within any city or county by any of the methods by which library services may be established, except that once established, such service shall not be discontinued until after it has been in operation for at least five years from the date of establishment.

SECTION 87. AMENDMENT. Subsections 3 and 4 of section 40-38-02 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. Whenever a tax for county library service is levied, any city already levying a tax for public library service under the provisions of this section or other provisions of law shall, upon written application to the county board of the county, be exempted from the county tax levy to the extent that the city making the application levies taxes for a library fund during the year for which the tax levy is made. If the city has been totally exempted from participation in any prospective county library program, the phrase "not less than fifty-one percent of the voters qualified electors of ~~such~~ the city or county as determined by the total number of votes cast at the last general election" as stated in section 40-38-01 shall mean fifty-one percent of the total number of votes cast at the last general election in the county less the total number of votes cast at the last general election in the city. If an election on the question is held, the voters qualified electors of any city so exempted from the county library tax shall not be entitled to vote on the establishment or discontinuance of the county library service.
4. Upon motion of the governing body or upon petition of not less than twenty-five percent of the voters qualified electors in the last general election of any city, school district, township, or county, filed not less than sixty days before the next election, the governing body shall submit to the voters qualified electors at the next election the question of whether the governing body shall increase the mill levy a specified amount for public library service above the mill levy limitation set out in this section. The governing body may call a special election at any time for the purpose of voting on the question, and the election shall be called, conducted, and certified as are other elections in that political

subdivision. Upon approval by sixty percent of the voters qualified electors voting in the election, the governing body shall increase the levy for public library service in the amount approved by the voters qualified electors.

SECTION 88. AMENDMENT. Section 40-38.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-38.1-02. Municipal arts fund - Levy - Collection - Kept separate. For the purpose of establishing and maintaining the municipal arts council, the governing body of a city authorizing the same shall establish a municipal arts fund. The fund shall consist of revenues from any city property tax authorized by this section, which levy may be made by the city at the direction of the municipal arts council in any amount, but not exceeding the limitation in subsection 7 of section 57-15-10 and any other moneys received from federal, state, county, city, or private sources. The city auditor shall keep the municipal arts fund separate and apart from the other money of the city, and it shall not revert to or be considered funds on hand by the governing body at the end of any fiscal year. The municipal arts fund shall be used exclusively for the establishment and maintenance of the municipal arts council and for grants by the council to appropriate arts organizations in the city. Upon motion of the governing body or upon petition of not less than twenty-five percent of the voters qualified electors voting in the last general election of the city, filed not less than sixty days before the next regular election, the governing body shall submit to the voters qualified electors at the next regular election the question of whether such governing body shall annually levy a specified amount not to exceed five mills for the municipal arts council.

SECTION 89. AMENDMENT. Section 40-44-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-44-02. Failure or refusal of city to adopt civil service - Petition - Election held. If the governing body of any city which is subject to the provisions of this chapter shall fail or refuse to adopt the provisions of this chapter, twenty percent of the qualified electors of the city may file a written petition with the city auditor demanding that the provisions be adopted or that the question be submitted to the qualified electors of the city, and unless the civil service system is adopted by the governing body, the question shall be submitted to the qualified electors of the city at the next regular municipal election.

SECTION 90. AMENDMENT. Section 40-51.2-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-51.2-05. Notice - Petition of owners and electors. The governing body shall not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of

presentation of their petition by one publication in the official newspaper of the city as provided by section 40-01-09.

SECTION 91. AMENDMENT. Subsection 1 of section 40-53.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If qualified electors of a city equal in number to one-fourth of the number of voters qualified electors voting at the last regular city election petition the board of county commissioners of the county wherein the city is situated to dissolve the city, the board of county commissioners shall order a special election to be held within the city on the question of dissolving the city.

SECTION 92. AMENDMENT. Section 40-53.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-53.2-02. Consolidation - Resolution or petition - Election. The governing body of any city may, by resolution, or shall, upon petition by ten percent of the number of qualified voters electors of the city who voted for governor at the last general election at which a governor was elected, place on the ballot at the next general election to be held in that city the following question:

Shall the city governing body appoint a committee from its membership to meet with members of the governing board of the city of -----, as a municipal consolidation review commission, to draft a proposal for consolidating the city of ----- with the city of -----?

SECTION 93. AMENDMENT. Section 40-55-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-55-08. Election to determine desirability of establishing recreation system - How called. The governing body of any municipality, school district, or park district to which this chapter is applicable, may and upon receipt of a petition signed by at least ten qualified voters electors but not less than five percent of those citizens qualified electors who voted at the last general election of the municipality, school district, or park district, shall submit to the qualified electors the question of the establishment, maintenance, and conduct of a public recreation system, and except in the case of a school district, the levying of an annual tax for the conduct and maintenance thereof of not more than two and five-tenths mills on each dollar of taxable valuation of all taxable property within the corporate limits or boundaries of such municipality or park district, to be voted upon at the next general election or special municipal election; provided, however, that such questions shall not be voted upon at the next general election unless such action of the governing body shall be taken, or such petition to submit such question shall be filed thirty days prior to the date of such election. A school district may levy a tax for the establishment,

maintenance, and conduct of a public recreation system pursuant to subsection 4 of section 57-15-14.3.

* SECTION 94. AMENDMENT. Section 54-10-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor, by his duly appointed deputy auditors or other authorized agents, shall audit, at least once every four 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. Municipalities.
2. Park districts.
3. School districts.
4. Firemen's relief associations.
5. Airport authorities.
6. Public libraries.
7. Water resource districts.
8. Garrison Diversion Conservancy District.
9. Rural fire protection districts.
10. Special education districts.
11. Vocational education centers.
12. Correction centers.
13. Recreation service districts.
14. Weed boards.

Audits may be conducted at more frequent intervals if the state auditor, in his discretion, deems it advisable. The state auditor may in lieu of conducting an audit every four years require annual reports from school districts with less than one hundred enrolled students, municipalities with less than three hundred population based on the latest federal census, 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 shall contain such financial information as the state auditor may request. The state auditor may also make such additional examination or audit as he deems necessary in addition to

* NOTE: Section 54-10-14 was also amended by section 2 of Senate Bill No. 2158, chapter 561.

such report. When a report is required in lieu of an audit, the state auditor upon receiving a petition containing the signatures of not less than ten percent of the qualified electors of the political subdivision voting for the office of governor at the preceding general election, shall conduct an audit of such political subdivision's books, records, and financial accounts.

The governing board of any political subdivision may provide for an audit annually by a certified public accountant or licensed public accountant, and such report shall be in such form and contain such information as the state auditor may require in addition to other information, and in such case the state auditor shall not be required to make the examination heretofore provided for in this section. The number of copies as requested by the state auditor of such audit reports shall be filed with the state auditor by the certified public accountant or licensed public accountant making such audit at the time that the report of audit is delivered to said political subdivisions, and the governing board of such subdivision shall not pay the fee for such audit until evidence of such 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 such subdivisions disclosed by such audit reports, and failure to make such corrections shall result in audits being resumed by the state auditor until such irregularities, procedures, or illegal actions are corrected and fees for such audits, so resumed, shall be 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 subdivisions in making and otherwise preparing the reports of audits herein provided for. All fees for the audits herein provided shall be paid by the subdivision audited to the state treasurer and by him credited to the general fund of the state.

SECTION 95. AMENDMENT. Section 54-10-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-15. Audits of municipal agencies and school districts by order of governor or upon petition. When so ordered by the governor of this state, or on petition of thirty-five percent of the qualified electors of any school district or city for which audits are not provided in section 54-10-14, or at the request of the chairman or governing board of any such political subdivision, the state auditor shall, through his deputy auditors or other authorized persons, audit the records of the governing body and the books, records, and financial accounts of the clerk or auditor thereof, as the case may be. Fees for such audits shall be paid in accordance with the provisions of section 54-10-14 to the state treasurer, and by him credited to the general fund of the state.

SECTION 96. AMENDMENT. Section 54-40-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-40-03. Disbursement of funds - Issuance of bonds. The parties to such agreement may provide for disbursements from public funds, including funds already raised to buy real estate for public buildings, proceeds of bonds issued pursuant to chapter 21-03, and other proper funds or properties already on hand, to carry out the purposes of the agreement. The total amount of bonds issued by a county and a city under this section shall be in proportion to the joint usage of the building by the county and the city and shall also consider the tax base of the county and the tax base of the city. When a county and a city wholly within the county boundaries propose to issue bonds for the purpose of a building for their joint use, the governing body of the county may submit to its qualified voters the proposition of issuing bonds in the total amount required to be borrowed for the building, under an initial resolution and ballot stating the maximum total principal amount of the bonds and the maximum principal amount thereof for which the city shall be obligated. In this event the governing body of the city shall adopt an ordinance or resolution stating the maximum amount of the obligation proposed to be incurred by the city and the other matters of information required for an initial resolution for bonds under the provisions of section 21-03-09, which ordinance or resolution shall be subject to referral to the qualified electors of the city by petition of the percentage of the qualified electors referred to in chapter 40-12 and upon the conditions and in the manner therein set forth. If the issuance of the bonds is approved by the required majority of the qualified voters electors of the county voting thereon, and if the city ordinance or resolution is not referred or is approved by a majority of the qualified electors of the city voting thereon, the bonds may be issued by the county and the obligation incurred by the city. The principal amount of the obligation incurred by the city to the county, as provided in the agreement, shall be a general obligation and indebtedness of the city as referred to and limited by section 21-03-04 and by section 15 of article X of the Constitution of North Dakota, and shall be deducted from the principal amount of the bonds in determining the net indebtedness incurred by the county in the issuance thereof. The city shall levy a direct, annual, irrevocable tax for the payment of its obligation and the interest thereon as required for the payment of general obligation bonds under the provisions of section 21-03-15, which tax shall be retained by the county auditor in the sinking and interest fund for the county bonds as provided in section 21-03-41. Each payment of principal, interest, and premium, if any, due with respect to the county bonds shall be the obligation of the city in the proportion that the original principal amount of the city's obligation bears to the original principal amount of the bonds, for the purpose of ascertaining the amount of net indebtedness of the city and the county outstanding at any time, of determining the amounts of taxes required to be assessed and collected annually by the city and the county for the bond sinking and interest fund, and of determining the amounts of income from the investment of the sinking and interest fund which are to be credited against the obligations of the city and county, respectively, and for all other purposes whatsoever. Nothing herein requires the city-county agreement to be

executed before the authorization of the bonds and the city's obligation thereon. The agreement when executed shall fix the relative contributions of the city and county to the capital cost of the building in a manner consistent with the maximum net indebtedness authorized to be incurred by each of them, respectively. If so provided in the agreement, the city may evidence its obligation by the issuance of general obligation bonds of the city and appropriate the proceeds of its bonds for expenditure in accordance with the terms of the agreement, and the amount of the county bonds may be reduced by the amount issued by the city. Funds other than taxes for debt service may be paid to and disbursed by such agency as may be agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by the parties to the agreement. Strict accountability of all funds and report of all receipts and disbursements shall be provided for.

SECTION 97. AMENDMENT. Subsection 3 of section 57-15-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Whenever the board of park commissioners deems it advisable to raise moneys by taxes in excess of the levy herein provided, for any purpose for which the park district is authorized to expend moneys raised by taxes, the board of park commissioners shall submit to the voters of the district the question of increasing the levy by a certain number of mills, but not to exceed fifteen mills, on the dollar of the taxable valuation of the district. When authorized by a majority of the qualified electors of the park district voting on the question at an election in which the question has been submitted, the board may increase the levy in the amount so authorized. This excess levy may be continued from year to year by action of the park board except that if a petition containing the signatures of not less than ten percent of the qualified electors of the park district, as determined by the city auditor of the municipality in which the park district is situated, is presented to the park board requesting an election on the question of continuing the excess levy, that question shall be submitted to the qualified electors of the park district at the next regular park district election. If the majority of the voters qualified electors voting at that election determine not to continue the excess levy, no further excess levy shall be made except that the election shall not affect the tax levy in the calendar year in which the election is held.

* **SECTION 98. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-14. **Tax levy limitations in school districts.** The aggregate amount levied each year for the purposes listed in section 57-15-14.3 by any school district, except the Fargo school district,

- * **NOTE:** Section 57-15-14 was also amended by section 1 of House Bill No. 1050, chapter 617.

shall not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of seventy mills on the dollar of the taxable valuation of the district, except that:

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
 - a. There may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved by a majority of the qualified electors voting upon the question at any regular or special school district election.
 - b. There shall be no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the qualified electors voting at any regular or special election upon such question.
2. In any school district having a total population of less than four thousand ~~according to the last federal decennial census,~~ there may be levied any specific number of mills that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.

The question of authorizing or discontinuing such specific number of mills authority or unlimited taxing authority in any school district shall be submitted to the ~~electorate~~ qualified electors at the next regular election upon resolution of the school board or upon the filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, unless such census is greater than four thousand in which case only fifteen percent of the number of persons enumerated in the school census shall be required. However, not fewer than twenty-five signatures shall be required unless the district has fewer than twenty-five qualified electors, in which case the petition shall be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district shall be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority shall not affect the tax levy in the calendar year in which the election is held. The election shall be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

SECTION 99. AMENDMENT. Section 57-15-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-16. Tax levy for building fund in school districts.

1. The governing body of any school district shall levy taxes annually for a school building fund, not in excess of twenty mills, which levy shall be in addition to and not restricted by the levy limitations prescribed by law, when authorized to do so by sixty percent of the qualified electors voting upon the question at a regular or special election in any school district. The governing body of such school district may create such building fund by appropriating and setting up in its budget for such an amount not in excess of twenty percent of the current annual appropriation for all other purposes combined, exclusive of appropriations to pay interest and principal of the bonded debt, and not in excess of the limitations prescribed by law. In all cases where a portion or all of the proceeds of such levy have been allocated by contract to the payment of rentals upon contracts with the state board of public school education as administrator of the state school construction fund, such levy shall be made annually by the governing body of the school district until the full amount of all such obligations is fully paid. Any portion of a levy for a school building fund which has not been allocated by contract with the state board of public school education must be allocated by the governing body pursuant to section 57-15-17. Upon the completion of all payments to the state school construction fund, such levy may be discontinued at the discretion of the governing body of the school district, or upon petition of twenty percent of the qualified electors who voted in the last school election, the question of discontinuance of the levy shall be submitted to the qualified electors of the school district at any regular or special election and, upon a favorable vote of sixty percent of the qualified electors voting, such levy shall be discontinued. Any school district, executing a contract or lease with the state board of public school education, which contract or lease requires the maintenance of the levy provided in this section, shall immediately file a certified copy of such contract or lease with the county auditor or auditors of the county or counties in which such school district is located. The county auditor or auditors shall register such contract or lease in the bond register in substantially the manner provided in section 21-03-23. Upon the filing of such contract or lease with the county auditor or auditors, the school district shall be without power to discontinue such levy and such levy shall automatically be included in the tax levy of such school district from year to year by the county auditor or auditors until a sufficient sum of money has been collected to pay to the state treasurer for the

retirement of all obligations of such school district with the state board of public school education.

2. The school board of any school district, in levying taxes for a school building fund as provided for in subsection 1, shall specify on the ballot the number of mills to be levied, and may in its discretion submit a specific plan for which such fund shall be used. The plan shall designate the general area intended to be served by use of such fund. The area intended to be served shall be described in the plan but need not be described in the building fund ballot. After approval of the levy and the plan no change shall be made in the purpose of expenditure of the building fund except that upon a favorable vote of sixty percent of the qualified electors residing in any specific area intended to be served, material changes may be made in such plan as it affects such area to the extent such changes do not conflict with contractual obligations incurred. The provisions of this section and of subsection 1 of section 57-15-17 in regard to the purpose for which the building fund may be expended shall not apply to expenditures for major repairs.

* SECTION 100. AMENDMENT. Section 57-15-22.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-22.2. Levy of taxes for township legal contingency fund. Upon presentation of a petition signed by twenty-five percent of the qualified electors in an organized or unorganized township voting in the last gubernatorial election, the governing body of an organized township or the board of county commissioners, for unorganized townships, may call a special election for the purpose of voting on the question of authorizing an excess levy on property within the township for the current year and not to exceed four succeeding years, or may submit the question to the voters qualified electors at the next regular township election, for organized townships, or at the next regular election, for unorganized townships. If a special election is called, the election shall be held not later than September first of the year in which the tax is to be levied, and the election shall be conducted as other elections of the political subdivision are conducted. The levy permitted by this section shall be in addition to all other levies authorized by law and shall be in an amount not to exceed ten mills on the taxable value of property in the township for not to exceed five years. Revenues from the levy shall be deposited in a special fund in the township or county treasury known as the legal contingency fund. Revenue in the fund may be used only for purposes of expenses of legal actions authorized or entered into by the governing body of the township or the county, on behalf of unorganized townships. If sixty percent of all votes cast on the question of authorizing the excess levy of taxes for the legal contingency fund are in favor of the excess levy, it shall be authorized and the county auditor shall extend such excess levy upon the tax list with other taxes. Upon

* NOTE: Section 57-15-22.2 was also amended by section 141 of Senate Bill No. 2086, chapter 82.

expiration of any mill levy authorized by this section the governing body of the township or county may, by resolution, transfer any unobligated balance in the legal contingency fund to the general fund of the township or county.

SECTION 101. AMENDMENT. Section 57-15-26.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-26.3. General tax levy of fire protection districts. A rural fire protection district may levy a tax in accordance with chapter 18-10 not exceeding five mills on the taxable valuation of property in the district except upon resolution adopted by the board of directors after receipt of a petition by not less than twenty percent of the qualified electors residing within the district, the levy may be made in an amount not exceeding ten mills.

SECTION 102. AMENDMENT. Section 57-15-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-44. City tax levy for acquiring real estate for public building. The governing body of any city may levy taxes annually, not exceeding the limitation in subsection 22 of section 57-15-10 for a fund which shall be used for the purpose of acquiring real estate as a site for public buildings, construction of public buildings, renovation and repair of public buildings, and the furnishing of public buildings, or for a city's participating share in urban renewal programs. The tax is to be levied, spread, and collected in the same manner as are other taxes in the city. Whether the levy shall be discontinued shall be submitted to the voters qualified electors at the next regular election upon petition of twenty-five percent of the qualified electors voting in the last regular city election, the petition to be filed not less than sixty days before the election. If the majority of the qualified electors vote to discontinue the levy, it may not again be levied without a majority vote of the qualified electors at a later regular election on the question of relevying the tax, which question may be submitted upon petition as above provided or by decision of the governing board.

SECTION 103. AMENDMENT. Section 57-15-50 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-50. Levy authorized for county ambulance service. Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax not exceeding the limitation in subsection 23 of section 57-15-06.7, for the purpose of subsidizing county ambulance services; provided, that this tax shall be approved by a majority of the voters qualified electors of the county voting at a regular or special countywide election. The county may budget, in addition to its annual operating budget for subsidizing ambulance service, no

more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated ambulance sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent ambulance sinking fund shall be in addition to the annual operating budget for subsidization, but the total of the annual operating budget and the annual ten percent ambulance sinking fund shall not exceed the approved mill levy.

SECTION 104. AMENDMENT. Section 57-15-51 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-51. Levy authorized for city ambulance service. Upon petition of ten percent of the number of qualified electors of the city voting in the last election for governor or upon its own motion, the governing body of each city in this state shall levy annually a tax of not to exceed five mills upon its taxable valuation, for the purpose of subsidizing city ambulance services; provided, that such tax shall be approved by a majority of the voters qualified electors of the city voting at a regular or special city election. Whenever a tax for county ambulance services is levied by a county, any city levying a tax for, or subsidizing city ambulance services, shall upon written application to the county board of such county be exempted from such county tax levy. The city may set aside, as a depreciation expense, up to ten percent of its annual ambulance service operating or subsidization budget in a dedicated ambulance sinking fund, deposited with the auditor for replacement of equipment and ambulances. The ten percent ambulance sinking fund may be in addition to the actual annual ambulance budget but the total of the annual ambulance budget and the annual ten percent ambulance fund shall not exceed the approved mill levy.

SECTION 105. AMENDMENT. Section 57-15-51.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-51.1. Levy authorized for township ambulance service. Pursuant to a vote of sixty percent of the qualified electors voting at the annual township meeting, or at a special election called for that purpose upon petition of fifty percent of the number of qualified electors of the township voting in the last election for governor, the board of township supervisors shall levy annually a tax approved by the ~~electorate~~ qualified electors not exceeding the limitation in subsection 7 of section 57-15-20.2 for the purpose of subsidizing township ambulance service.

* **SECTION 106. AMENDMENT.** Subsection 3 of section 57-15-56 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The levy authorized by this section shall be imposed or removed only by a vote of at least sixty percent of the ~~electorate~~ qualified electors of the county or city

* **NOTE:** Section 57-15-56 was also amended by section 1 of House Bill No. 1214, chapter 621.

directing the governing body to do so. The governing body shall put the issue before the people 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.

SECTION 107. AMENDMENT. Section 57-15-57 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-57. Levy for county welfare. The board of county commissioners, when authorized by sixty percent of the qualified electors voting on the question in a regular election or special election called by the county commissioners, may levy an annual tax not exceeding the limitation in subsection 26 of section 57-15-06.7, for county welfare purposes. The proceeds of this levy shall be used solely and exclusively for county welfare purposes, as determined by the county social service board. The levy may be discontinued at the discretion of the county commissioners; or, upon petition of five percent of the qualified electors of such county, the question of discontinuance of the levy shall be submitted to the qualified electors of the county at any regular or special election and, upon a favorable vote of sixty percent of the qualified electors voting, the levy shall be discontinued.

*** SECTION 108. AMENDMENT.** Section 57-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-16-04. Increase may be for five years - Extension - Discontinuance. The governing board of the school district may submit the question of authorizing an excess levy for the current year and not to exceed four succeeding years. The notice of election shall give the year or years for which authorization is sought for an excess levy as well as the percentage of excess which is to be voted upon. Prior to the termination of the excess levy, such levy may be extended for a term not to exceed the original term of the increase upon the unanimous approval by the governing board of the school district, and further extensions may be made for the same number of years prior to each termination date upon the unanimous approval of the governing board of the school district. The question of discontinuing such extended excess levy in any school district shall be submitted to the ~~electorate~~ qualified electors at the next regular election upon the filing with the school board of a petition containing the signatures of not less than ten percent of the qualified electors of the district as determined by the county superintendent for such county in which such school is located; provided, however, that the approval of discontinuing such extended excess levy shall not affect the tax levy in the calendar year in which the election is held. The election shall be held in the same manner and subject to the same conditions as provided in section

*** NOTE:** Section 57-16-04 was also amended by section 8 of Senate Bill No. 2065, chapter 209.

15-53.1-22 for elections for approval of school district reorganization plans.

* SECTION 109. AMENDMENT. Section 58-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-01. Organization of township - Petition - Election. If twenty-five percent of the qualified electors who voted for governor in the last general election of a congressional township which has taxable valuation of more than twenty thousand dollars and which contains twenty-five or more ~~legal voters~~ qualified electors petition the board of county commissioners for the organization of the congressional township into a civil township, the board of county commissioners shall then submit the question whether said township shall be organized to the qualified electors in the congressional township. If twenty-five percent of the qualified electors who voted for governor in the last general election of two or more neighboring congressional townships which have an aggregate taxable valuation of more than twenty thousand dollars and which contain an aggregate of twenty-five or more ~~legal voters~~ qualified electors petition the board of county commissioners for the organization of the congressional townships into a civil township, the board of county commissioners shall then submit the question whether said township shall be organized to the qualified electors in the congressional townships. Thirty days' published notice in at least one newspaper of general circulation in the township shall be given of the election. If a majority of the votes cast approve of organization, the township shall then be organized, and if the petitions filed for organization did not designate a name, the board of county commissioners shall select one.

SECTION 110. AMENDMENT. Section 58-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-08. Fractional township - Annexing to another township. The board of county commissioners may attach a fractional congressional township to an adjoining township within the same county or divide it between two or more townships within the same county upon the petition of a majority of the ~~legal voters~~ qualified electors to be affected.

SECTION 111. AMENDMENT. Section 58-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-09. Annexing parts of township divided by river from rest of township. If rivers, lakes, or creeks divide a civil or congressional township and make it inconvenient to do township business, the board of county commissioners of the county in which the township is located may annex that part of the township segregated by such river, lake, or creek to an adjoining township in the same county upon the petition of not less than two-thirds of the

* NOTE: Section 58-02-01 was also amended by section 7 of House Bill No. 1054, chapter 236.

legal voters qualified electors residing in the part of the township so segregated.

SECTION 112. AMENDMENT. Section 58-02-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-10. Division of township in which there are two or more ~~municipalities~~ cities. The board of county commissioners may divide a township in which there are two or more cities, each containing two hundred or more inhabitants, upon the petition of a majority of the legal voters qualified electors to be affected. If the division is ordered, it shall be made in the manner best suited to the convenience of the territory concerned.

SECTION 113. AMENDMENT. Section 58-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-11. Uniting congressional townships into civil townships. The board of county commissioners may unite two or more congressional townships into one civil township or may add not more than three congressional townships to any congressional township already organized as a civil township when petitioned to do so by a majority of the legal voters qualified electors to be affected.

SECTION 114. AMENDMENT. Section 58-02-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-21. Petition for and notice of application for division - Publication. A petition for the division of a township as provided in section 58-02-19, addressed to the board of county commissioners and signed by a majority of the legal voters qualified electors residing within the proposed township may be presented to the board at any regular meeting thereof. Notice of the time and place of the hearing on such petition shall be given at least thirty days prior to such hearing by the publication of such notice at least three times in the newspaper in which the proceedings of the board of county commissioners are published, or if there is no such newspaper, the notice shall be posted in at least three public places in the proposed new township and in at least three public places in the remainder of the township affected by the division. One of such notices shall be posted at the place where the last township election was held for the township from which the separation is sought.

SECTION 115. AMENDMENT. Section 58-02-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-25. Dissolution of township - Petition - When considered by superior supervisors or board of county commissioners - Hearing. If a petition asking for the dissolution of an organized civil township

and setting forth the reasons therefor, and signed by one-half of the legal veterans qualified electors of such township, is presented to the board of township supervisors at least ten days prior to the second Tuesday in March in any year, the petition shall be considered by such board at its regular meeting on the second Tuesday in March in such year. If the legal veterans qualified electors of an organized township, as determined by the board of county commissioners, do not exceed five in number, said board of county commissioners, upon the petition of any legal veteran qualified elector of such township, or upon its own motion, without any such petition, may dissolve such township, by filing in the office of the county auditor its resolution to dissolve such township. Following the filing of the resolution by said board of county commissioners, the county auditor shall designate a time and place for a public hearing of all qualified electors who are owners of any interest in real property assessed for taxation in the township, and who reside within the boundaries of the township as fixed by the order of the board of county commissioners. Notice of the hearing shall be given by publication once each week for two consecutive weeks in a newspaper of general circulation in the township, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to all qualified electors who are owners of any interest in real property assessed for taxation in the township or who are residing within the boundaries of the township. The county auditor shall also notify all owners of property within the township by mail at least two weeks in advance of the proposed dissolution hearing.

SECTION 116. AMENDMENT. Section 58-02-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-32. Proof of signatures on petition. The fact that any petition required under any provision of this chapter is signed by the required number of signers residing in the territory described therein may be proved by the affidavit of any legal veteran qualified elector residing in the territory and having knowledge of the facts.

*** SECTION 117. AMENDMENT.** Section 58-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-04-05. Organization of annual or special meetings. The qualified electors present on the day of the annual or special meeting shall be called to order by the township clerk, or, if he is not present, the veterans qualified electors may elect by acclamation one of their number to act as chairman for the purpose of calling the meeting to order and to act as clerk after the selection of a moderator. The veterans qualified electors shall elect by acclamation three of their number as judges, and such judges shall be sworn and shall act as the judges of the qualifications of township the qualified electors of the township. The qualified electors shall proceed to choose one of their number to preside as moderator of the meeting. The clerk of the township, if present, or in his absence, the clerk of the

* NOTE: Section 58-04-05 was also amended by section 1 of House Bill No. 1352, chapter 660.

meeting, shall keep full minutes of its proceedings in which he shall enter at length every order, direction, rule, and regulation made by the meeting. Meeting and voting hours of an annual or special meeting shall be optional with the township board from one p.m. to five p.m. or from seven p.m. to ten p.m., provided proper notice is given under the provisions of this chapter. However, for a meeting beginning at one p.m., the township board, either upon its own resolution, or upon receipt of a petition signed by twenty percent of the qualified electors of the township voters as determined by the total number who voted in the last township election, shall extend the meeting and voting hours to eight p.m. The positions of moderator, clerk, and the three judges shall be separate and distinct positions and no such positions shall be held by the same person. The moderator, clerk, and the three judges each shall be entitled to a salary of eight dollars per day for each day actually expended in the performance of their duties. Such salary shall be paid out of township funds made available for such purpose. However, in those townships in which the offices of township clerk and treasurer have been merged, the person holding such office shall receive compensation as provided by law as township treasurer only, and shall not receive additional compensation for his duties as clerk.

SECTION 118. AMENDMENT. Section 58-13-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-13-07. Pounds may be established in unorganized or dissolved townships. Upon the petition of a majority of the legal voters qualified electors of an unorganized township or a township dissolved as a civil township, the board of county commissioners shall have the same power to establish and regulate pounds as the qualified electors and supervisors of an organized township.

SECTION 119. AMENDMENT. Section 58-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-15-01. **Petition for policeman in townsite - Contents of petition.** If sixty percent of the qualified electors residing within the limits of any platted unincorporated townsite shall petition the board of supervisors of the township in which it, or the greater portion thereof, is situated, praying for the appointment of a policeman to serve as a night watchman in such townsite and for the levy of a tax on the property therein to pay such officer, and stating the period for which the appointment is to be made, and the name of the townsite for which such police officer is to be appointed, the board of township supervisors shall appoint such officer for the period designated in the petition and fix his compensation.

SECTION 120. AMENDMENT. Section 61-04.1-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-23. Weather modification authority created by petition. A weather modification authority shall be created by resolution and five commissioners appointed thereto for ten-year terms of office, by the board of county commissioners. A board of county commissioners shall not adopt a resolution creating an authority until it has received a valid petition signed by at least fifty-one percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding general election. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in the petition and designated by the petitioners to be appointed weather modification authority commissioners. In the event any one of the five candidates named in the petition to be appointed weather modification authority commissioner is unable or refuses for any reason to accept appointment as commissioner, or is disqualified by not meeting residence requirements, as an a qualified elector in the county, the board of county commissioners shall name its own appointee for a ten-year term of office in place of any disqualified candidate selected by the petitioners. If any weather modification authority commissioner submits his resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason, after accepting office, the board of county commissioners shall name its appointee as a commissioner to the weather modification authority. All vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired term.

Any weather modification authority created pursuant to this section shall expire ten years after the date of the initial appointment of the commissioners thereto. Any unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be transferred into the county general fund by the officers of the weather modification authority on or before the ten-year termination date provided by this section. However, all unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall remain in the name of the weather modification authority if the board of county commissioners of such county by resolution creates a weather modification authority and all its powers in accordance with section 61-04.1-27.

Nothing in this section shall prevent continuation or reinstatement of a weather modification authority, provided the authority is renewed for another ten years by petition of the qualified electors in the same manner as the initial weather modification authority was created by petition of qualified electors as provided for in this chapter.

In the event more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified county electors of the county voting for the office of governor at the last preceding general election shall be selected by the board of county

commissioners. However, the petition with the highest percentage must have the signatures of at least forty percent of the qualified electors in the county and the sum total of all qualified electors signing all petitions filed must equal at least sixty percent of the qualified electors in the county. In no case shall the name of the same qualified elector appear on two or more petitions, but in such event, the name shall be stricken from both petitions.

SECTION 121. AMENDMENT. Subsection 4 of section 61-04.1-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A heading: "Committee for Petitioners", followed by this statement: The following qualified electors of (name of county), state of North Dakota, are authorized to represent and act for us, and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent thereto.

SECTION 122. AMENDMENT. Section 61-04.1-29 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-29. Creation of weather modification authority by election. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a weather modification authority is presented to the board of county commissioners, not later than forty-five days prior to the next countywide election, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall, by resolution, establish a weather modification authority as described in section 61-04.1-23 with all powers set out in this chapter, including the power to certify a tax levy as provided by section 61-04.1-26.

SECTION 123. AMENDMENT. Section 61-04.1-30 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-30. Abolishment of weather modification authority by election. When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of a weather modification authority as created in sections 61-04.1-27 and 61-04.1-29 is presented to the board of county commissioners, not later than forty-five days prior to the next countywide election, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall abolish the weather modification authority as of December thirty-first following

the election. All unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be deposited in the general fund of the county.

SECTION 124. AMENDMENT. Section 61-24-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-03. Election of directors of the Garrison Diversion Conservancy District. A director of the Garrison Diversion Conservancy District shall be nominated and elected in each county in the district. Any person who is a resident and qualified elector of the county who aspires to the office of director of the Garrison Diversion Conservancy District 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 district is to be elected, present to the county auditor a petition giving his name, post-office address, the title of the office "Director of the Garrison Diversion Conservancy District", and containing the signatures of not less than fifty nor more than three hundred qualified electors of the county to which each signer has added his residence with street number, if any, and the date of signing.

The petition shall be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA,
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 ~~veter~~ elector therein; that I am a candidate for nomination to the office of director of the Garrison Diversion Conservancy District to be chosen 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 two candidates receiving the highest number of votes if more than two are running shall be nominated.

The names of the candidates so nominated at the primary election shall be placed on the no-party ballot at the ensuing general election and the candidate receiving the highest number of votes shall be duly elected.

At the primary and general elections votes shall be canvassed, returned certified, and certificates of nomination and election issued in the manner provided by law for the nomination and election of county officers.

SECTION 125. AMENDMENT. Section 61-24.2-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24.2-14. Addition of other governmental entity to district. Upon filing with the county commission a petition containing the signatures of ten percent of the ~~eligible~~ qualified electors residing in the governmental entity, voters within that governmental entity may join the district upon a favorable vote of sixty percent majority of the ~~eligible~~ qualified electors residing therein, exclusive of any cities within the entity, provided that the governing body's application for membership be approved by the board of directors of the district. The county auditor of each county shall certify the results of the election to the secretary of state in the manner provided by section 16.1-15-25. The board of directors, as a condition of approval of such application, may require the levy of such taxes within said governmental entity as may be equitable to equalize the burden of such governmental entity with the obligations paid or assumed by the other governmental entities in the district. Such governmental entity 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 in addition to the amount which may otherwise be legally levied by that governmental entity.

Approved March 14, 1985

CHAPTER 236

HOUSE BILL NO. 1054
(Legislative Council)
(Interim Elections Committee)

ELECTION OFFICIALS

AN ACT to amend and reenact sections 11-11-14, 16.1-05-01, subsection 2 of section 16.1-05-03, sections 16.1-05-04, 16.1-05-05, 16.1-06-16, and 58-02-01 of the North Dakota Century Code, relating to the appointment, duties, and compensation of election officials, term of office for election inspectors, distribution of election supplies, and the instruction provided by the county auditor.

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

SECTION 1. AMENDMENT. Section 11-11-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-14. Powers of board of county commissioners. The board of county commissioners shall have the following powers:

1. To institute and prosecute civil actions for and on behalf of the county and in its name.
2. To make all orders respecting property of the county.
3. To levy a tax not exceeding the amount authorized by law.
4. To liquidate indebtedness of the county.
5. To construct and repair bridges and to open, lay out, vacate, and change highways in the cases provided by law. But the board may not contract for the construction of bridges costing more than one hundred dollars without first complying with the provisions of chapter 24-08.
6. To establish election precincts in the county in areas outside the boundaries of incorporated cities except as provided in chapter 16.1-04.

7. To appoint the inspectors of election in unorganized townships-
- 8- To equalize the assessments of the county in the manner provided by law.
- 9- 8. To furnish to the county officers the necessary telephone, postage, telephone and telegraph tolls, and all other things necessary and incidental to the performance of the duties of their respective offices to be paid out of the county treasury.
- ~~10-~~ 9. To furnish a fireproof safe in which to keep all the books, records, vouchers, and papers pertaining to the business of the board.
- ~~11-~~ 10. To dispose of property of the county in the manner provided in chapter 11-27.
- ~~12-~~ 11. To purchase lands in lieu of those sold.
- ~~13-~~ 12. To grant to any person the right of way for the erection of telephone lines, electric light systems, or gas or oil pipeline systems over or upon public grounds, county streets, roads, or highways.
- ~~14-~~ 13. To establish a garbage and trash collection system encompassing all or any part of the territory of the county. The words "garbage and trash collection system" shall include the operation and maintenance of one or more sanitary landfill sites, or other types of processing sites for the disposal of trash and garbage. The board may operate such system in cooperation with any one or more political subdivisions of this or any other state in accordance with the provisions of chapter 54-40. The board may borrow money by issuing certificates of indebtedness, repayable from fees or special assessments, or both, which may be charged to the proper parcels of land or to persons receiving the direct benefits of the garbage and trash collection system, or repayable in such other manner as may be provided by law, in order to purchase the initial equipment and land necessary for operation of the system. If the board of county commissioners resolves to establish such a system, the expenses of establishing, operating, and maintaining it may be financed by fees charged to persons receiving direct benefits or by special assessment against the parcels of land properly charged therewith, or by both such fees and assessments. The assessment may be made, published, altered, appealed from, and confirmed under the procedures set forth in chapter 11-28.1.
- 15- To do and perform such other duties as are or may be prescribed by law-

- ~~16-~~ 14. To maintain, in its discretion, all public roads and private highways and roads that are being used as part of regularly scheduled public schoolbus routes.
- ~~17-~~ 15. To expend county funds for the purpose of participating in an organization of county governments pursuant to section 11-10-24. This subsection ~~shall not be construed as authorizing~~ does not authorize a mill levy, and the limitations embodied in section 57-15-06 ~~shall~~ apply to expenditures under this subsection, which expenditures shall be from the county general fund.
- ~~18-~~ 16. To expend county funds to finance in part or entirely for county employees a group insurance program for hospital benefits, medical benefits or life insurance, and a group retirement program through either the state retirement program or a private company.
17. To do and perform any other duties prescribed by law.

SECTION 2. AMENDMENT. Section 16.1-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-05-01. Election officers. At each primary, general, and special statewide or legislative district election, and at county elections, each polling place shall have an election board in attendance. The election board shall consist of an election inspector and two election judges.

1. The election inspector shall be selected in the following manner:
 - a. In all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and shall fill all vacancies occurring in those offices.
 - b. ~~In all other areas, the board of county commissioners shall appoint the election inspectors and shall fill all vacancies occurring in those offices.~~
 - c. In all other precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and shall fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
 - d. The election inspector shall serve a term of two years. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the vacancy shall be filled for that

election by the auditor. Prior to the next election, the appropriate appointing body or county auditor shall fill the vacancy for the remainder of the term.

- Except in the case of special elections, all appointments required to be made under this section shall be made at least twenty-one days preceding an election. The governing body or board shall notify the county auditor of the appointments, and of any vacancies filled, within twenty-four hours of its action.
2. The election judges for each precinct shall be the precinct committeemen receiving the largest number of votes at the precinct caucus at which they were elected, and representing the two parties which 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 shall appoint from his precinct a member of his party to serve as election judge. Should such appointment not be made, the position shall be filled by appointment by the district party chairman. Each election judge shall be given a certificate of appointment signed by the chairman of the district committee of his 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 the primary, general, or special election. If this notice is not received within the time specified in this section, ~~the election inspector~~ county auditor shall appoint the judge ~~no later than one week prior to the election.~~ 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 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 oath or affidavit before the state's attorney of the county.
 3. Poll clerks shall be appointed by the election judges. Each election judge may appoint one poll clerk. However, in voting precincts or districts in which over three hundred votes are cast in any election, election judges may each appoint one additional poll clerk. The appointment of poll clerks by the election judges shall be made on the basis of the prospective clerks' knowledge of the election procedure and ability to write legibly. All election precincts that use voting machines as authorized in chapter 16.1-06 may, in addition to all other

authorized poll clerks, have as many as two additional poll clerks appointed by each election judge. The additional poll clerks shall be appointed on the same basis as other poll clerks.

SECTION 3. AMENDMENT. Subsection 2 of section 16.1-05-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. At lease fifteen Not more than twenty days, but at least three days before each primary, general, or special statewide or legislative district election, each county auditor or his the auditor's designated representative shall conduct a course one or, at the auditor's option, two training sessions on election laws and election procedures for all members of each election board officials in the county. The course session shall be conducted at such place or places throughout the county as the county auditor deems determines to be necessary. Attendance at the course session is mandatory for members of the election board and optional for poll clerks at the discretion of unless the board of county commissioners of each the county, and the determines that the poll clerks in that county may not attend. The county auditor shall notify the members of the election boards, and poll clerks if applicable, of the time and place of the course. The county auditor shall also notify and the state's attorney of the time and place of the course session. The state's attorney shall attend all sessions of the course to give advice on election laws. The county auditor shall invite the district chairman in that county representing any political party casting at least five percent of the total votes cast for governor at the last election to attend the session at the chairman's own expense. On the date of such course or courses, the county auditor may deliver to all election inspectors at such meeting the official ballots, suitable manila envelopes, and all other materials as provided in chapter 16.1-06. Each Except as otherwise provided in this section, each person attending the course or courses provided for herein shall be compensated as hereinafter provided in section 16.1-05-05. Poll clerks attending the course at the discretion of the board of county commissioners shall be reimbursed for expenses and mileage and compensated for performance of election duties as are members of election boards pursuant to section 16.1-05-05.

SECTION 4. AMENDMENT. Section 16.1-05-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-05-04. Duties of the members of the election board during polling hours.

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.
2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.
- 2- 3. The election inspector shall assign two poll clerks, one from each political party represented on the election board, to perform the function of maintaining the pollbooks. The two designated poll clerks shall each maintain a pollbook. Each pollbook shall contain the name and address of each person voting at the precinct, and shall be arranged in the form and manner prescribed by the secretary of state.
- 3- 4. It shall be the duty of the The members of the election board to shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector.
- 4- 5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.
- 5- 6. All members of the election board shall distribute ballots and other election materials to electors. Both election judges shall together give any assistance requested by electors in marking ballots or operating voting machines. The election officers shall instruct voters on how to open and close voting machines and how to move the levers to cast and change votes. The election inspector shall supervise the conduct of the election at the polling place, and shall assign duties so as to equally and fairly include both political parties represented on the election board.
- 6- 7. Each member of the election board shall maintain order in the polling place.
- 7- 8. All members of the election board at each precinct using an electronic voting system shall, before the polls are open, verify that each voting device in that precinct contains a ballot label that correctly lists the names of the candidates legally on the ballot for that precinct and verify that the booklets are all identical in arrangement.

SECTION 5. AMENDMENT. Section 16.1-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-05-05. Compensation of election officers - Commissioner of labor to certify minimum wage applicable to election officials - Secretary of state to certify amount to county auditors. The state commissioner of labor, thirty days before each statewide primary, general, or special election, shall determine the state minimum wage applicable to election inspectors, election judges, poll clerks, or any other private individual who performs duties in the election process, and shall certify the amounts to the secretary of state. The secretary of state shall then certify the amounts to the county auditors. As required by this title, the county auditors shall pay at least the amounts so determined to the relevant election officials, but in no event shall the compensation exceed fifty dollars for each election. Members of the election board and poll clerks who attend the training sessions provided by section 16.1-05-03 shall be paid at least the wage determined by the state commissioner of labor for the hours in attendance in the session in addition to necessary expenses and mileage; however, for poll clerks, and for judges the combined wages for the training sessions and election may not exceed sixty dollars or any greater amount as determined by the board of county commissioners. State, county, or other election officials who are required to incur expenses while performing duties in the election process shall be reimbursed only for their actual and necessary expenses and mileage in the performance of those duties, in accordance with sections 54-06-09, 44-08-04, and 11-10-15. Other persons performing election duties shall also be paid for expenses and mileage in like manner and amounts. Members of election boards who attend the training sessions provided by section 16.1-05-03 shall be paid twenty-five percent more than the minimum wage determined in this section, during the time spent in the performance of their election duties; ~~however, they shall receive only their actual and necessary expenses and mileage for attendance at the training session.~~

SECTION 6. AMENDMENT. Section 16.1-06-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-16. County auditor to provide and distribute ballots - Other election supplies delivered at same time. For each election precinct in his the county, the county auditor shall provide the number of ballots he deems the auditor determines to be necessary. At least fifteen days before any election, each Each county auditor shall:

1. Have the ballots printed at least fifteen days prior to the election, and the same may be inspected by any person at the auditor's office.
2. Deliver to the inspector in each precinct at least three days but not more than fifteen days prior to the election the number of ballots and blank forms of pollbooks, blanks

for election returns with the proper captions, forms of oaths and certificates, and tally sheets necessary to carry out the provisions of this title.

* SECTION 7. AMENDMENT. Section 58-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-01. Organization of township - Petition - Election. If twenty-five percent of the electors who voted for governor in the last general election of a congressional township which has taxable valuation of more than twenty thousand dollars and which contains twenty-five or more legal voters petition the board of county commissioners for the organization of the congressional township into a civil township, the board of county commissioners shall then submit the question whether said township shall be organized to the electors in the congressional township. If twenty-five percent of the electors who voted for governor in the last general election of two or more neighboring congressional townships which have an aggregate taxable valuation of more than twenty thousand dollars and which contain an aggregate of twenty-five or more legal voters petition the board of county commissioners for the organization of the congressional townships into a civil township, the board of county commissioners shall then submit the question whether said township shall be organized to the electors in the congressional townships. Thirty days' published notice in at least one newspaper of general circulation in the township shall be given of the election. The board of county commissioners shall appoint the election officials necessary for the election. If a majority of the votes cast approve of organization, the township shall then be organized, and if the petitions filed for organization did not designate a name, the board of county commissioners shall select one.

Approved March 29, 1985

* NOTE: Section 58-02-01 was also amended by section 109 of House Bill No. 1059, chapter 235.

CHAPTER 237

SENATE BILL NO. 2067
(Legislative Council)
(Interim Elections Committee)

BALLOT FORM

AN ACT to amend and reenact sections 16.1-06-04, 16.1-06-09, and 16.1-06-12 of the North Dakota Century Code, relating to the form of the ballot in elections.

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

* SECTION 1. AMENDMENT. Section 16.1-06-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under the provisions of this title for use in precincts in which voting machines or electronic voting systems are not used ~~shall~~ must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at such election.
4. Have the language "Vote for ----- name (or names) only" placed immediately under the name of each office.
5. Have printed thereon "Place a crossmark (X) by the name of the person for whom you wish to vote."
6. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.
7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark his choice for each

* NOTE: Section 16.1-06-04 was also amended by section 1 of Senate Bill No. 2068, chapter 246.

candidate opposite the name of such candidate, and such space shall precede or follow the candidate's name on the same line in a uniform manner.

8. Have printed thereon the following language: "All ballots, other than those used to vote absentee, must be stamped and initialed by appropriate election officials in order to be counted."

Any precinct which uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

In precincts in which electronic voting systems purchased after June 30, 1985, are used, the ballot card must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot card must otherwise be arranged in a manner and form approximating as far as possible the requirements of this section.

In precincts in which voting machines or electronic voting systems purchased before July 1, 1985, are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters shall be arranged in a manner and form approximating the requirements of this section.

SECTION 2. AMENDMENT. Section 16.1-06-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-09. Constitutional amendments and initiated and referred measures - Placed on separate ballot - Manner of stating question - Explanation of effect of vote - Order of listing. Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, shall be printed on a separate ballot by ballot title only and in the manner specified by the secretary of state and shall be deposited in a box separate from that provided to receive the ballots for public officers. A constitutional amendment, initiated or referred measure, or other question must, unless otherwise determined by the secretary of state, be stated in full in a legible manner on the paper ballot or the ballot card when using an electronic voting system purchased after June 30, 1985, and the ballot label when using an electronic voting system purchased before July 1, 1985. If the secretary of state concludes the amendment or measure is too long to make it practical to print in full, the amendment or measure may be printed by ballot title only and in the manner specified by the secretary of state. The ballot title shall be written by the secretary of state and approved by the attorney general. The size of type to be used on such ballots shall be specified by the secretary of state.

Immediately preceding the ballot title or the full text of the initiated or referred measure on the printed ballot, the secretary of state shall cause to be printed a short, concise statement in boldface type, which statement shall fairly represent the substance of the initiated or referred measure. The attorney general shall approve all such statements written by the secretary of state. Immediately subsequent to the foregoing statement, the secretary of state shall cause to be printed another short, concise statement of the effect of an affirmative or negative vote on the constitutional amendment or measure, initiated measure, or referred measure in terms of whether the proposal will or will not enact, amend, or repeal a portion or portions of the constitution or laws of the state of North Dakota if an affirmative or negative vote should prevail. This explanatory statement shall be drafted by the secretary of state and shall be approved by the attorney general. The words "Yes" and "No" shall be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with a square formed of black lines after each statement in which the voter may indicate by a cross or other mark how he desires to vote on the question. Where two or more amendments or questions are to be voted on, they shall be printed on the same ballot. In precincts in which voting machines ~~or electronic voting systems~~ are used, the ballot title, in the case of amendments or measures submitted by the people, or the title of the legislative bill or resolution, which shall serve as the ballot title, in the case of proposed amendments submitted by the legislative assembly, shall be set forth in full. Provided, however, in such cases where the ballot title or the title of the legislative bill or resolution is of such length to make it physically impossible to fit such titles upon voting machines ~~or electronic voting systems~~, the attorney general shall reduce such titles to a length which will allow the placing of such titles upon voting machines ~~or electronic voting systems~~, but shall fully express the purpose of such amendments or questions, and the reduced version of the titles shall be used on the voting machines ~~or electronic voting systems~~.

The measures to be submitted to the electors shall be grouped and classified as constitutional measures, initiated statutes, or referred statutes and shall be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly shall be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures shall be numbered consecutively, without regard to the various groups or classifications.

SECTION 3. AMENDMENT. Section 16.1-06-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-12. **Definitions.** As used in this title with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on ballot cards.
2. "Ballot card" means, for an electronic voting system purchased after June 30, 1985, a tabulating card containing the names of offices and candidates and the questions to be voted on, which is used in conjunction with the voting device and on which votes may be recorded. For an electronic voting system purchased before July 1, 1985, ballot card means a tabulating card on which votes may be recorded.
3. "Ballot envelope" means the envelope in which the ballot card is enclosed and upon which the names of write-in candidates may be written.
4. "Ballot label" means, for an electronic voting system purchased before July 1, 1985, the booklet or guide containing the names of offices, candidates, and questions to be voted on, which is used in conjunction with the voting device and voting card.
5. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.
6. "Electronic voting system" means a system employing a voting device in conjunction with ballot labels or ballot cards and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.
7. "Voting device" means a device in which ballot cards are used in connection with a punch device for the piercing of ballots by the voter, a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.

Approved March 29, 1985

CHAPTER 238

SENATE BILL NO. 2332
(Senator Holmberg)
(Representative Cleveland)

PRECINCT MAPS AT POLLS

AN ACT to amend and reenact section 16.1-06-19 of the North Dakota Century Code, relating to the posting of maps showing precinct boundaries at the polling place.

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

SECTION 1. AMENDMENT. Section 16.1-06-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-19. Instructions, advertisements, maps, and ballots posted in polling places. Each county auditor shall have cards printed, in large type, containing full instructions to electors on obtaining and preparing ballots and a copy of section 16.1-01-12. He shall furnish ten such cards to the election inspector in each election precinct who, prior to the opening of the polls, shall post at least one of the cards in each booth or compartment provided for the preparation of ballots and at least three of the cards in and about the polling place. Three of the official ballots without the official stamp thereon shall be posted conspicuously in the polling place on the morning of the election. The county auditor, at the time of delivering the ballots to the inspector of elections in each precinct, shall deliver at least five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to such inspector of elections. Not less than three of such newspaper publications or copies shall be posted conspicuously in the polling place on the morning of the election. Each county auditor shall furnish the election inspector in each precinct with four copies of a map showing the election precinct's boundaries. The inspector shall, prior to the opening of the polls, post the maps at the entry to and in other conspicuous places around the polling place.

Approved March 29, 1985

CHAPTER 239

HOUSE BILL NO. 1296
(Representative Lindgren)
(Senator Holmberg)

ABSENT VOTER BALLOT APPLICATIONS

AN ACT to amend and reenact section 16.1-07-06 of the North Dakota Century Code, relating to an application for absent voter's ballot.

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

SECTION 1. AMENDMENT. Section 16.1-07-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-07-06. Application form.

1. Application for an absent voter's ballot shall be made on a blank furnished by the proper officer of the county, city, or school district of which the applicant is an elector, or on any blank containing the required information and in substantially the following form:

I, -----, a duly qualified elector of the township of -----, or of the ----- precinct of the ----- ward and residing at ----- in the city of ----- of the county of ----- of the state of North Dakota, to my best knowledge and belief entitled to vote in such precinct at the next election, hereby make application for an official absent voter's ballot to be voted by me at such election. I understand that it is a criminal offense to make a false statement in order to obtain an absentee ballot.

I have resided in my precinct for at least thirty days.
My phone number is -----.
Dated this ----- day of -----, 19--.

(signature of applicant)

(mailing address)

2. A qualified elector who is absent from the state is not required to file an application for an absent voter's ballot for a primary or general election if either of the following apply:

- a. The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine.
- b. The elector is a United States citizen living outside the United States.

If the qualified elector furnishes the county auditor with a current mailing address and the elector's local residence or precinct, the county auditor shall mail to the qualified elector a ballot with a return envelope and instructions for voting. The county auditor may maintain a list of the qualified electors receiving a ballot for the primary election and may mail those electors a ballot for the next general election.

Approved March 29, 1985

CHAPTER 240

SENATE BILL NO. 2144
(Committee on Judiciary)
(At the request of the Secretary of State)

PRIMARY ELECTION CANDIDATE AFFIDAVIT

AN ACT to amend and reenact section 16.1-11-10 of the North Dakota Century Code, relating to the candidate's affidavit to place a name on the primary election ballot.

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

SECTION 1. AMENDMENT. Section 16.1-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-10. Applicant's name placed upon ballot - Affidavit to accompany petition. Upon receipt by the secretary of state of the petition or certificate of endorsement provided for in section 16.1-11-06 accompanied by the following affidavit, he the secretary of state shall place the applicant's name upon the primary election ballot in the columns of his the applicant's party as hereinafter provided. The affidavit shall be substantially as follows:

State of North Dakota)
County of -----) ss.

I, -----, being duly sworn, depose and say that I reside in the county of ----- and state of North Dakota; that I am a candidate for nomination to the office of ----- to be chosen at the primary election to be held on the -----, 19--, and I do hereby request that my name be printed upon the primary election ballot as provided by law, as a candidate of the ----- party for said office.

Candidate's signature

Subscribed and sworn to before me, this ----- day of -----, 19--.

Notary Public, North Dakota

NOTARY SEAL

My Commission Expires -----

Approved March 27, 1985

CHAPTER 241

SENATE BILL NO. 2145
(Committee on Judiciary)
(At the request of the Secretary of State)

PRIMARY ELECTION BALLOT ELECTOR'S AFFIDAVIT

AN ACT to amend and reenact section 16.1-11-14 of the North Dakota Century Code, relating to application to place a name on the ballot in the primary election.

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

SECTION 1. AMENDMENT. Section 16.1-11-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-14. Application by other persons to place name on ballot -
Petition - Affidavit. An application to have a name placed on the
primary election ballot for nomination for any office designated in
this chapter may be made by five qualified electors by presenting
the petition required in section 16.1-11-06 or 16.1-11-11 to the
proper official, and subscribing and filing an affidavit in
substantially the following form:

State of North Dakota))
County of -----) ss.

A -----, B -----, C -----,
D -----, and E -----, being duly sworn, each
for himself, deposes and says that he is a qualified elector
in the state of North Dakota, that he hereby makes application
to have the name of ----- printed on the primary
election ballot of the ----- party for the office
-----, to be voted for at the primary election to
be held on the ----- day of -----, 19---; that
said ----- is, to the best of his knowledge,
information, and belief, a ----- and eligible
to hold the office of ----- under the constitution.

Subscribed and sworn to before me this -----
day of -----, 19----

Notary Public, North Dakota

NOTARY SEAL

My Commission Expires-----

However, an affidavit relating to a candidate on the no-party ballot shall not contain any reference to party affiliation. When the application is received by the proper officer, he shall place the name on the primary election ballot as a party or no-party candidate, as the case may be. The petition and affidavit provided for in this section shall not be filed without the written consent of the person to be nominated endorsed thereon.

Approved March 22, 1985

CHAPTER 242

SENATE BILL NO. 2143
(Committee on Judiciary)
(At the request of the Secretary of State)

BALLOT INSTRUCTIONS AND SPACES

AN ACT to amend and reenact subsections 5 and 8 of section 16.1-11-22 of the North Dakota Century Code, relating to voting instructions placed on a ballot and a voting space on a ballot for marking the choice of candidates.

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

SECTION 1. AMENDMENT. Subsections 5 and 8 of section 16.1-11-22 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. Immediately below the warning against voting for candidates of more than one party shall be printed: "Put a crossmark (X) opposite the name of the candidate for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."
8. At the side of the name of each aspirant and in a column shall be printed a square or other figure for making a crossmark or other mark. No squares or other figures shall be printed at the head of the ballot.

Approved March 29, 1985

CHAPTER 243

SENATE BILL NO. 2141
(Committee on Judiciary)
(At the request of the Secretary of State)

NAME ARRANGEMENT ON BALLOTS

AN ACT for an Act to amend and reenact section 16.1-11-27 of the North Dakota Century Code, relating to arrangement of names on ballots and voting machines.

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

SECTION 1. AMENDMENT. Section 16.1-11-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-27. Arrangement of names on ballots and voting machines.

1. On sample ballots, the names of candidates for each office shall be arranged alphabetically according to surnames.
2. On the official ballot used at the election, including electronic voting system ballots, the names of candidates beside or under headings designating each office to be voted for shall be alternated in the following manner:
 - a. The ballot shall first be arranged with the names in the order in which they are submitted for use on the sample ballots by the secretary of state for the state and district offices all the names for each office on the ballot in an order determined by lot by the county auditor or responsible election official, and prepared by the county auditor for the all state, district, and county offices.
 - b. In printing each set of official ballots for the various election precincts, the position of the names shall be changed in each office division as many times as there are candidates in the office division in which there are the most names. The same number of ballots shall be printed after each change of position.

- c. In making the changes of position, the printer shall take the candidate's name at the head of each office division and place it at the bottom of that division, moving the column up so the name that was second before the change is first after the change.
3. In precincts employing voting machines, the position of names which require alternating under the provisions of this section shall be alternated as follows:
- a- The names shall be alternated on voting machines so the name appearing first in one precinct will be last in the next precinct, and the name that appeared second shall be first in the next precinct, and so on until each name has been moved up or over one space accordingly. This process shall be continued from one precinct to another and for as many names as are involved. There shall be a different alternation sequence for each of the following, based on the geographical area by which the office is filled:
- (1) a. Offices to be filled by the electors of the state, the entire county, or any district which includes the entire county.
- (2) b. Offices to be filled by the electors of districts smaller than the county, with a different rotation for each of those districts.
- b- 4. The precincts shall be arranged according to the total votes cast for governor at the last general election in which the office of governor was filled, starting with the precinct having the highest total votes cast and ending with the precinct having the lowest total votes cast in that election.
- e- The initial location of the names in the precinct having the highest total votes shall be determined by lot by the city or county auditor or responsible election official.
- d- 5. If there are more than three candidates for any office, and it is not possible to place all of the names on one line, the names shall be placed in two or more lines having an equal or nearly equal number of names on each line; provided, that in no event shall only one name appear on any line.

Approved March 22, 1985

CHAPTER 244

SENATE BILL NO. 2147
(Committee on Judiciary)
(At the request of the Secretary of State)

INDEPENDENT CANDIDATES BALLOT COLUMN

AN ACT to amend and reenact section 16.1-12-02 of the North Dakota Century Code, relating to a single column on the ballot for independent candidates.

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

* SECTION 1. AMENDMENT. Section 16.1-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-12-02. Certificates of nomination by petition - Form and contents. Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. The names of nominees so nominated shall appear on the ballot in a single column for independent candidates. Each certificate of nomination by petition shall contain:

1. The name of the nominee.
2. The office the nominee desires to fill.
3. The post-office address of the nominee.
4. A statement in not more than five words of the party or principle which the nominee represents, but the statement shall not indicate an affiliation with or the support of any political party organized in accordance with this title.
5. Signatures of qualified electors, as defined in this title, who reside in the state, district, or political subdivision. The signatures need not be appended to one paper, and each person signing shall add his mailing address and the date of signing. The signatures on the petition shall be in the following number:

* NOTE: Section 16.1-12-02 was also amended by section 1 of House Bill No. 1207, chapter 245, and amended by section 43 of House Bill No. 1059, chapter 235.

- a. If the nomination is for an office to be filled by the electors of the entire state, there shall be not less than one thousand signatures.
 - b. If the nomination is for an office to be filled by the electors of a district less than the entire state, the number of signatures shall be ten percent of the number of votes cast in the district for governor at the last preceding general election, but in no case shall more than three hundred signatures be required.
6. If the petition is for the office of governor or lieutenant governor, it shall contain the names and other required information of candidates for both those offices.

Approved March 22, 1985

CHAPTER 245

HOUSE BILL NO. 1207
(Koland)PRESIDENTIAL CANDIDATE PETITION
REQUIREMENTS

AN ACT to amend and reenact section 16.1-12-02 of the North Dakota Century Code, relating to signatures necessary for the placement of the name of a presidential candidate on the ballot.

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

* SECTION 1. AMENDMENT. Section 16.1-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-12-02. Certificates of nomination by petition - Form and contents. Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. The names of nominees so nominated shall appear on the ballot in a single column for independent candidates. Each certificate of nomination by petition shall contain:

1. The name of the nominee.
2. The office the nominee desires to fill.
3. The post-office address of the nominee.
4. A statement in not more than five words of the party or principle which the nominee represents, but the statement shall not indicate an affiliation with or the support of any political party organized in accordance with this title.
5. Signatures of qualified electors, as defined in this title, who reside in the state, district, or political subdivision. The signatures need not be appended to one paper, and each person signing shall add his mailing address and the date of signing. The signatures on the petition shall be in the following number:

* NOTE: Section 16.1-12-02 was also amended by section 1 of Senate Bill No. 2147, chapter 244, and amended by section 43 of House Bill No. 1059, chapter 235.

- a. If Except as provided in subdivision c, if the nomination is for an office to be filled by the electors of the entire state, there shall be not less no fewer than one thousand signatures.
 - b. If the nomination is for an office to be filled by the electors of a district less than the entire state, the number of signatures shall be ten percent of the number of votes cast in the district for governor at the last preceding general election, but in no case shall more than three hundred signatures be required.
 - c. If the nomination is for the office of president, there shall be no fewer than four thousand signatures.
6. If the petition is for the office of governor or lieutenant governor, it shall contain the names and other required information of candidates for both those offices.

Approved March 29, 1985

CHAPTER 246

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

ELECTION BALLOT STAMPING

AN ACT to amend and reenact sections 16.1-06-04 and 16.1-13-22 of the North Dakota Century Code, relating to the form of the election ballot.

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

* SECTION 1. AMENDMENT. Section 16.1-06-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under the provisions of this title for use in precincts in which voting machines or electronic voting systems are not used shall must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at such election.
4. Have the language "Vote for ----- name (or names) only" placed immediately under the name of each office.
5. Have printed thereon "Place a crossmark (X) by the name of the person for whom you wish to vote."
6. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.
7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark his choice for each

* NOTE: Section 16.1-06-04 was also amended by section 1 of Senate Bill No. 2067, chapter 237.

candidate opposite the name of such candidate, and such space shall precede or follow the candidate's name on the same line in a uniform manner.

8. Have Provide a space enclosed in a rectangle and have printed thereon next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted."

Any precinct which uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

In precincts in which voting machines or electronic voting systems are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters shall be arranged in a manner and form approximating the requirements of this section. In precincts in which electronic voting systems are used, the requirements of subsection 8 must be met for the ballot card and ballot envelope.

SECTION 2. AMENDMENT. Section 16.1-13-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-13-22. Delivering ballot to elector - Stamping. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot or ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect his right to vote the elector should observe the stamping and initialing of the ballot. When an electronic voting system is used, the inspector or judge delivering the ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot stub is detached by anyone except an election judge, the ballot card and ballot envelope shall not be deposited in the ballot box, but shall be marked spoiled and placed with the other spoiled ballots. At primary elections, the inspector or judge shall also inform each elector that if he splits his ballot or votes for candidates of more than one party his ballot will be rejected. Before delivering any ballot to an elector, the inspector or judge shall stamp once ~~at the top of the back of~~ in the rectangle provided on the ballot or ballot card and ballot envelope the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall write his initials thereon. Failure to stamp and initial a ballot or ballot card in the proper place ~~on the ballot shall~~ does not invalidate such ballot or ballot card, but a complete failure to stamp and initial a ballot ~~shall~~ or ballot card does invalidate the ballot or ballot card. Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope does not invalidate the ballot envelope, but complete failure to stamp and initial a ballot envelope that has been used to write in a vote does invalidate the ballot envelope and the vote found thereon.

Approved April 4, 1985

CHAPTER 247

HOUSE BILL NO. 1075
(Legislative Council)
(Interim Judiciary "B" Committee)

ASSISTANCE FOR DISABLED VOTERS

AN ACT to amend and reenact section 16.1-13-27 of the North Dakota Century Code, relating to voter assistance due to the disability of an elector.

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

SECTION 1. AMENDMENT. Section 16.1-13-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-13-27. Disability of elector. Any elector who declares to the judges of election that he or she the elector cannot read the English language, or that because of blindness or other disability is unable to mark his or her 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 his or her the elector's ballot. No one assisting any elector in marking a ballot under this chapter shall give information regarding the same. 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 divulge to anyone within the polling place the name of any candidate for whom he or she the elector intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark his or her the elector's ballot.

Approved March 14, 1985

CHAPTER 248

SENATE BILL NO. 2070
(Legislative Council)
(Interim Elections Committee)

COUNTY CANVASSING BOARD COMPOSITION

AN ACT to amend and reenact section 16.1-15-15 of the North Dakota Century Code, relating to the composition of the county canvassing board.

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

SECTION 1. AMENDMENT. Section 16.1-15-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-15. County canvassing board - Composition. The county canvassing board ~~shall~~ must be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and a representative of the district committee of all legislative districts which wholly or partly fall within the boundaries of the county as appointed by the district chairmen of the two political parties which received the highest number of votes cast for governor at the most recent general election at which a governor was elected. For any special county election when the county is composed of more than one legislative district and the election does not involve any legislative or statewide office, the county canvassing board must be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and one representative as appointed by the state chairman for each of the two political parties that received the highest number of votes cast for governor at the most recent general election at which a governor was elected.

Approved March 28, 1985

CHAPTER 249

SENATE BILL NO. 2259
(Senators Christensen, Walsh)
(Representatives Koland, Thompson)

BALLOT CANVASSING AND RECOUNT

AN ACT to amend and reenact sections 16.1-15-17, 16.1-15-22, 16.1-15-23, 16.1-15-25, 16.1-15-28, 16.1-15-29, 16.1-15-30, 16.1-15-35, 16.1-15-40, 16.1-15-44, 16.1-16-01, 16.1-16-04, and 16.1-16-10 of the North Dakota Century Code, relating to the canvassing and recount of election ballots.

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

SECTION 1. AMENDMENT. Section 16.1-15-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-17. Time of county canvassing board meeting - Oath required - Reconsideration of canvass. As soon as the returns are received by the county auditor, but not later than ~~ten~~ six days after each election, the county canvassing board shall meet and, after taking the oath of office, shall proceed to open and publicly canvass the returns. After the initial meeting of the board as provided in this section, any two or more members may call a meeting of the board and upon approval of a majority of the members, the board shall recanvass the results of the election or any portion thereof and may correct any previous canvass or certification or both in regard to the election. Any correction of any previous certification of election results as provided in this section shall be immediately dispatched to the secretary of state who shall call a meeting of the state canvassing board as provided in section 16.1-15-35 for the purpose of recanvassing and, if necessary, correcting any previous certification of the election results.

SECTION 2. AMENDMENT. Section 16.1-15-22 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-22. County auditor to transmit abstract of votes to secretary of state after primary election. The county auditor of each county, under his official seal, shall return to the secretary of state by registered or certified mail within ~~fourteen~~ ten days after the day

of any primary election, a certified abstract, under separate political designation or principle, or no-party designation, as the case may be, of the total number of votes cast in his county and the votes cast for every candidate for nomination for United States senator, United States representative, state officers, judges of the supreme court, judges of the district court, and members of the legislative assembly. The county auditor also shall file with the secretary of state a certificate showing the names and addresses of the persons nominated under the several political designations and principles in his county. The certified abstract and the certificate of nomination to be mailed under the provisions of this section shall be in the possession of the secretary of state before four p.m. on the fifteenth tenth day after the primary election.

SECTION 3. AMENDMENT. Section 16.1-15-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-23. Notice of nomination given candidate for county office by county auditor - Publication of findings of canvassing board. Upon the completion of the canvass of the returns of a primary election by the county canvassing board, the county auditor shall mail or deliver in person to each candidate nominated for any county office a certificate of his nomination and notice that his name will be placed on the official ballot. If the election results indicate that any candidate is entitled to demand a recount pursuant to subsection 1 of section 16.1-16-01, the county auditor shall not prepare or deliver the certificate of nomination until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. Nomination notices for other than county offices shall be given by the secretary of state pursuant to section 16.1-15-40. The county auditor shall cause a copy of the findings of the canvassing board to be published in the official newspaper of the county.

SECTION 4. AMENDMENT. Section 16.1-15-25 of the North Dakota Century Code is hereby amended and reenacted to read 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 fifteen ten days and before four p.m. on the fifteenth 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 county at such 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 be sealed, endorsed "presidential election returns", and shall 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 county, he 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 county.

SECTION 5. AMENDMENT. Section 16.1-15-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-28. Certificate of election for officers elected in county at general election. Immediately after the canvass of the general election returns by the county canvassing board, the county auditor shall prepare a certificate of election for each of the persons having the highest number of votes for county offices, and shall deliver the certificate to the person entitled thereto on his making application to the county auditor therefor. If the election results indicate that any candidate is entitled to demand a recount pursuant to subsection 1 of section 16.1-16-01, the county auditor shall not prepare or deliver the certificate of election until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later.

SECTION 6. AMENDMENT. Section 16.1-15-29 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-29. Determining tie vote in county offices. If the requisite number of county officers are not elected because two or more persons have equal and the highest number of votes for one and the same office, a recount must be done pursuant to section 16.1-16-01. If a recount results in a tie vote the county auditor shall give notice to the persons to appear at his office at a time appointed by him. The persons then shall publicly decide by a coin flip which of them shall be declared elected. The county auditor shall prepare and deliver to the person elected an election certificate as provided in this chapter. If a demand for a recount is timely made, this section shall apply only if that recount results in a tie vote. No person who has assented to the determination of an election according to this section may thereafter demand a recount of that election.

SECTION 7. AMENDMENT. Section 16.1-15-30 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-30. Determining tie vote for legislative assembly. If the requisite number of persons are not elected to the state senate or house of representatives because two or more persons have equal and the highest number of votes for one and the same office, a recount must be done pursuant to section 16.1-16-01. If a recount results in a tie vote, the county auditor, if the legislative district in question is within one county, shall, by certified mail, notify the persons with equal and the highest number of votes to appear in his office at a time fixed by him. The time fixed shall not be more

than ~~ten~~ five days from the date the tie is determined by the county auditor. On the date fixed, the persons notified to appear shall publicly decide by a coin flip which of them shall be declared elected, and the county auditor shall certify the results to the secretary of state who shall prepare and deliver to the person elected a certificate of election as provided in this chapter. If the legislative district in question is within the boundaries of more than one county, the county auditor of the county which cast the greater number of votes for the office of governor at the last election at which a governor was elected shall proceed in accordance with this section. ~~If a demand for a recount is timely made, this section shall apply only if that recount results in a tie vote. No person who has assented to the determination of an election according to this section may thereafter demand a recount of that election.~~

SECTION 8. AMENDMENT. Section 16.1-15-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-35. Meeting of state canvassing board. Not later than ~~twenty-five~~ seventeen days next following a primary, general, or special election, the state canvassing board shall meet at the office of the secretary of state for the purpose of canvassing and ascertaining the result of the election. The secretary of state shall notify the members of the board of the date of the meeting.

SECTION 9. AMENDMENT. Section 16.1-15-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-40. Statement prepared by state canvassing board for primary election - Contents - Signing - Candidate notified of nomination. The state canvassing board shall prepare the statement required by subsections 1, 2, and 3 of section 16.1-15-21 for primary elections. The certificate shall be signed by the members of the board and filed in the office of the secretary of state. Upon completion of the canvass, the secretary of state shall mail to each candidate nominated a notice of his nomination stating that his name will be placed upon the official ballot to be voted for at the ensuing general election. If the election results indicate that any candidate is entitled to ~~demand~~ a recount pursuant to subsection 1 of section 16.1-16-01, the secretary of state shall not prepare or deliver the notice of nomination until ~~the time to demand a recount has expired, or~~ the recount results have been determined and the winner declared, ~~whichever is later~~. The secretary of state shall file a copy of the findings of the board and shall publish those findings in a newspaper printed in Burleigh County.

SECTION 10. AMENDMENT. Section 16.1-15-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-44. Secretary of state to record statement of general or special election, prepare certificates of election, publish statement. After receiving each certified statement and determination made by the state canvassing board, the secretary of state shall record the same in his office and shall prepare and transmit to each of the persons declared to be elected, a certificate of election as provided in this chapter. If the election results indicate that any candidate is entitled to demand a recount pursuant to subsection 1 of section 16.1-16-01, the secretary of state shall not prepare or deliver the certificate of election until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. The secretary of state shall cause a copy of the certified statement and determination to be published in the official newspaper of Burleigh County.

* SECTION 11. AMENDMENT. Section 16.1-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-01. Election recounts. A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, or county office, or for the approval or disapproval of any measure or question submitted to the electors of this state or one of its counties shall be conducted as follows:

1. The demand for a recount may be made by any of the following A recount must be conducted when:
 - a. Any person ~~who~~ failed to be nominated in a primary election by less than ~~two~~ one percent of the highest vote cast for a candidate of his party for the office sought.
 - b. Any person ~~who~~ failed to be elected in a general or special election by less than one-half of one percent of the highest vote cast for a candidate for that office.
 - c. Any person ~~who files~~ a petition signed by at least five electors, when a A question or measure submitted to the 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. The recount demand must be made within ten ~~Within three~~ days after the canvass of the votes ~~by the county canvassing board in the case of county elections, and by the state canvassing board in the case of congressional, state, district, or legislative elections. The demand shall be in writing, shall recite one of the conditions in subsection 1 as a basis for the recount, and shall be filed with-~~

* NOTE: Section 16.1-16-01 was also amended by section 45 of House Bill No. 1059, chapter 235, and amended by section 1 of Senate Bill No. 2324, chapter 251.

- a- The secretary of state when the recount is for a congressional, state, district, or legislative office or a question submitted to the electors of the entire state.
- b- The county auditor when the recount is for a county office or a question submitted to the electors of a county.
- 3- When, the secretary of state receives a timely recount demand and finds it to be in the proper form, he shall immediately notify all the county auditors to conduct a recount as provided in this section recounts as required by subsection 1. The secretary of state shall fix the date of statewide the recounts within seven days after giving notice that the auditor must conduct the recount. The date shall be within ten days after receipt of the recount demand. The Within three days after the canvass of votes by the county canvassing board, the county auditor shall determine the validity of recount demands filed with him and shall fix the date for recounts limited to his county. The date shall be within ten eight days after receipt of the recount demand the canvass. In all recount proceedings, the county auditor shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.
- 4- 3. Recounts shall be conducted by the county auditor who may employ up to four county electors to assist in the recount. The county auditor shall review all paper, machine, electronic voting system, and absentee ballots, whether or not the ballots were counted at the precinct or the county canvass, to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor files a recount demand is a candidate involved in the recount, he shall be disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section.
- 5- 4. The persons entitled to participate at the recount are:
- a. Each candidate involved in the recount, either personally or by a representative.
- b. An elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor shall

count the challenged ballot as he deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor shall submit all challenged ballots to the recount board for decision. The recount board shall be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. No person shall serve on the recount board if he would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the county commission who would be qualified to serve on the board shall appoint disinterested electors of the county to serve as alternates. The recount board shall review all challenged ballots, and on majority vote shall decide how they shall be counted. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter.

- 6- 5. The county auditor shall certify the results of the recount no later than fifteen days after the filing of the ~~recount~~ demand three days after the recount. The recount result shall become the official result of the election in the county. The county auditor shall prepare a corrected abstract of the votes. In a recount limited to the county, if the corrected abstract shows no change in the outcome of the election, no further action shall be taken. If the corrected abstract changes the outcome of the election, the county auditor shall issue certificates of nomination or election accordingly, and shall certify the new result of a question submitted to the electorate.
- 7- 6. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than fifteen days after the filing of the recount demand three days after the recount, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the electorate accordingly.
- 8- 7. The expenses incurred in a recount of a county election shall be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a congressional, state, or legislative election shall be paid by the state from the general fund, upon approval by the secretary of state of a statement of expenses received from the county auditors.

- 9- 8. The results of any recount of votes cast in an election of a member of the legislative assembly shall be admissible in either house of the legislative assembly, or before a committee of either house, as evidence to aid in the determination of an election contest pending in that house.

SECTION 12. AMENDMENT. Section 16.1-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-04. Time for commencement of action. Any action to contest an election shall be commenced and the complaint shall be filed in the district court of the contestee's county of residence within five days after final certification of a recount by the appropriate canvassing board, or within fourteen days after the final certification by the appropriate canvassing board if no recount is demanded to be conducted, except as provided in section 16.1-16-10. However, if the grounds for the action is the illegal payment of money or other valuable thing subsequent to the filing of any statement of expenses required by this title, or if the contestee does not or cannot meet the qualifications to hold the office as required by law, the action may be commenced at any time. The contestee shall serve and file his answer within fourteen days after service of the contest summons and complaint.

SECTION 13. AMENDMENT. Section 16.1-16-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-10. Legislative contest of election. Legislative election contests shall be determined pursuant to sections 16.1-16-10 through 16.1-16-17. Any person intending to contest, before either house of the legislative assembly, the election of a member of the legislative assembly shall serve on that member a statement of contest, which shall specify the grounds for the contest. The statement shall be served on the member and a copy filed with the secretary of state within five days after a recount is completed, and within ten days after the canvass is completed if no recount is demanded to be conducted.

Approved March 28, 1985

CHAPTER 250

SENATE BILL NO. 2069
(Legislative Council)
(Interim Elections Committee)

ALTERNATIVE CANVASSING METHOD

AN ACT to create and enact a new section to chapter 16.1-15 of the North Dakota Century Code, relating to the canvass of votes following an election.

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

SECTION 1. A new section to chapter 16.1-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Alternative method for canvassing election for counties using electronic voting systems or electronic counting machines - County canvassing board. At the option of the county auditor in any county using electronic voting systems or electronic counting machines, the county canvassing board, in lieu of the election boards, shall canvass the votes for those precincts using either device. The board shall canvass the votes in the same manner as required for the election boards insofar as those provisions of law are applicable. The auditor shall notify the county canvassing board of this duty not less than one week prior to the election. This procedure is in addition to the canvass of returns that the county canvassing board must perform as provided in this chapter.

Approved March 28, 1985

CHAPTER 251

SENATE BILL NO. 2324
(J. Meyer)

ELECTION RECOUNT PROCEDURES

AN ACT to amend and reenact subsection 5 of section 16.1-16-01 of the North Dakota Century Code, relating to election recount procedures.

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

* SECTION 1. AMENDMENT. Subsection 5 of section 16.1-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 5. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. An elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor shall count the challenged ballot as he deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor shall submit all challenged ballots to the recount board for decision. The recount board shall be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. No person shall serve on the recount board if he would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the county commission who would be qualified to serve on the

* NOTE: Section 16.1-16-01 was also amended by section 45 of House Bill No. 1059, chapter 235, and amended by section 11 of Senate Bill No. 2259, chapter 249.

board shall appoint disinterested electors of the county to serve as alternates. The recount board shall review all challenged ballots, and on majority vote shall decide how they shall be counted. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor shall take appropriate steps to safeguard the ballots.

Approved March 27, 1985

FIRES

CHAPTER 252

SENATE BILL NO. 2392
(Senators Kusler, Ingstad)
(Representatives DeMers, Rydell, Sauter)

HAZARDOUS SUBSTANCE DISCLOSURE

AN ACT to provide disclosure requirements for persons who produce or sell toxic or hazardous substances in the state to the state fire marshal and local fire departments; and to provide a penalty.

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

SECTION 1. Disclosure of information concerning toxic or hazardous substances - List to state fire marshal and local fire departments - Exceptions - Availability of information restricted - Penalty. Every person who produces, either as a direct or indirect result of conducting the production of goods or services, routinely stores, or sells a hazardous substance in this state shall submit to the state fire marshal and to the fire department in the fire district in which is located a facility owned and operated by the person, a list of hazardous substances that are consistently generated by, used by, stored at, or transported from the facility. As used in this section "hazardous substance" means a chemical or substance or mixture of chemicals and substances which is defined as a hazardous substance under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [Pub. L. 96-510], as amended, and meets or exceeds the listed reportable quantity for that substance. As used in this section "facility" means any building or other structure or place where hazardous substances are used, manufactured, or stored, and includes areas where hazardous substances are handled, mixed, processed, packaged, or repackaged. The information must be provided in sufficient specificity, in accordance with rules adopted by the state fire marshal, that the state fire marshal and the local fire departments are informed of

the nature of the hazardous substances, the hazards presented by the hazardous substances, and the appropriate response in dealing with an emergency involving the hazardous substances. The state fire marshal shall by rule except persons from the requirements of this section when the persons do not generate, use, store, or transport sufficient amounts of hazardous substances to create a significant threat to public safety. Persons who have copies of emergency response plans meeting the requirements of the federal Resource Conservation and Recovery Act of 1976 on file with the state fire marshal and the local fire district shall be deemed to be in compliance with the requirements of this section. The state fire marshal and local fire departments receiving information under this section may make the information received available only to other governmental emergency response departments. Any person who violates this Act is guilty of a class B misdemeanor.

Approved March 22, 1985

CHAPTER 253

SENATE BILL NO. 2104
(Senator Wogsland)
(Representative Laughlin)

FIRE INSURANCE PREMIUM TAX DISTRIBUTION

AN ACT to amend and reenact subsection 4 of section 18-04-05 of the North Dakota Century Code, relating to fire insurance premium tax distribution to rural fire protection districts.

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

* SECTION 1. AMENDMENT. Subsection 4 of section 18-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. To each rural fire protection district organized within the provisions of this title or rural fire department certified by the state fire marshal, two hundred dollars plus a sum equal to two and one-fourth percent of the premiums; ~~excluding crop hail insurance premiums~~ received by insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property within the boundaries of such rural fire protection districts or property served by certified rural fire departments.

Approved March 30, 1985

* NOTE: Section 18-04-05 was also amended by section 32 of Senate Bill No. 2086, chapter 82.

CHAPTER 254

HOUSE BILL NO. 1479
(Representatives Laughlin, O'Connell)
(Senators Wogsland, Tweten)

CARRYOVER FUNDS OF RURAL FIRE PROTECTION DISTRICTS

AN ACT to amend and reenact section 18-10-07 of the North Dakota Century Code, to allow rural fire protection districts to accumulate funds from year-to-year for major purchases of firefighting equipment.

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

SECTION 1. AMENDMENT. Section 18-10-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-10-07. Fire protection policy to be determined - Tax levy. The board of directors shall determine a general fire protection policy for the district and shall annually estimate the probable expense for carrying out the contemplated program. The annual estimate of probable expense may include an amount determined by the board of directors to be necessary to be carried over to a future year for purchase of firefighting equipment, ambulances, or other emergency vehicles. The estimate shall be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year, who shall levy a tax upon the taxable property within the district for the maintenance of the fire protection district for the fiscal year as provided by law. The tax shall not exceed the limitation in section 57-15-26.3. No signature on the petition shall be considered valid if made more than ninety days prior to receipt of the petition. The tax shall be:

1. Collected as other taxes are collected in the county.
2. Turned over to the secretary-treasurer of the rural fire protection district, who shall have a surety bond in the amount of at least five thousand dollars.
3. Placed to the credit of the rural fire protection district so authorizing the same by its secretary-treasurer in a state or national bank, except amounts to be carried over to a future year for purchase of firefighting equipment,

ambulances, or other emergency vehicles may be invested to earn the maximum return available.

4. Paid out upon warrants drawn upon the fund by authority of the board of directors of the district, bearing the signature of the secretary-treasurer and the countersignature of the president of the rural fire protection district.

The amount of tax levy may not exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expense including the amount of principal and interest upon the indebtedness of the district for the ensuing year and including any amount determined by the board of directors to be necessary to be carried over to a future year for purchase of firefighting equipment, ambulances, or other emergency vehicles.

Approved March 14, 1985

CHAPTER 255

HOUSE BILL NO. 1435
(Thompson, Whalen)

WITHDRAWAL FROM RURAL FIRE PROTECTION DISTRICT

AN ACT to create and enact a new section to chapter 18-10 of the North Dakota Century Code, relating to withdrawal of territory from a rural fire prevention district.

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

SECTION 1. A new section to chapter 18-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Withdrawal from fire prevention district. Any person having an ownership interest in property subject to a mill levy as provided for in section 18-10-07 and wishing to withdraw such property from the rural fire protection district may do so as provided in this section, subject to the following restrictions:

1. The territory to be withdrawn from the district must border on the outer boundary of the district.
2. The territory to be withdrawn from the district remains subject to and chargeable for the payment and discharge of the proportion of obligations outstanding at the time of filing the petition for the withdrawal of the territory that the taxable valuation of property in the territory to be withdrawn bears to the taxable valuation of all property within the district prior to withdrawal.
3. Mill levies imposed under section 18-10-07 remain in effect until the proportionate share of outstanding obligations are paid.
4. The proceedings for withdrawal must be initiated by the filing of a petition with the appropriate county auditor or auditors signed by the fee title holders of sixty percent of the surface acreage in the territory sought to be withdrawn, and contain a description of the boundaries of the territory sought to be withdrawn and a map or plat illustrating such area.

5. The county auditor shall verify from the tax schedules and determine whether the petition complies with the requirements of subsection 4.
6. The county auditor shall determine and certify the respective percentage proportions of the taxable valuation of the territory petitioned to be withdrawn to the taxable valuation of all property in the district prior to withdrawal to the board of directors of the district concerned.
7. Within twenty days after receipt of the petition, verification, and computation of respective percentage proportions, the board of directors of the district concerned shall attach to the petition a statement of outstanding obligations of the district and shall forward the petition to the appropriate board or boards of county commissioners.
8. The board or boards of county commissioners shall, at a regular meeting, compute the indebtedness proportionately assignable to the territory sought to be withdrawn, and shall by written order describe the boundaries of the territory withdrawn, the indebtedness of the district assigned to the territory and subject to continued levy under section 18-10-07. The order and computation must be filed in the office of the county auditor or auditors.
9. The annual estimate required under section 18-10-07 must reflect the annual expense of retiring principal and interest upon the proportionate share of district indebtedness assigned to withdrawn territory.

Approved March 22, 1985

CHAPTER 256

HOUSE BILL NO. 1086
(Legislative Council)

(Interim Committee on Public Employees Retirement Program)

**BENEFITS UNDER ALTERNATE FIREMEN'S
RETIREMENT PLAN**

AN ACT to amend and reenact section 18-11-18 of the North Dakota Century Code, relating to benefits under the alternate firemen's relief association retirement plan.

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

SECTION 1. AMENDMENT. Section 18-11-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-11-18. ~~Proportional decrease~~ Reduction in benefits if funds not sufficient. If at any time the 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 ~~proportionately~~ decrease the benefits provided for in sections 18-11-15, 18-11-16, and 18-11-17 ~~by a total sum not to exceed twenty percent thereof, and not more than two percent in any one calendar year, in accordance with actuarial recommendations to assure the solvency of the fund and~~ subject to the following conditions:

1. In no event shall the The benefit, payable in any calendar year, for existing and future retirees and pension recipients may not be less than the benefit paid in the previous calendar year, except to the extent that the reduction is attributable to a reduction in the salary of a first-class fireman upon which the benefit is computed to an existing retiree of similar status.
2. The decrease in benefits authorized by this section shall not exceed the lesser of twenty percent of the benefits or so much thereof as is certified by the association's actuary to be necessary, from time to time. The duration of the decrease shall not extend beyond the period recommended by the association's actuary. 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 action may be taken only after actuarial study and recommendations which are 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.

Approved March 1, 1985

CHAPTER 257

HOUSE BILL NO. 1172
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

FIRE PREVENTION AND CONSTRUCTION REQUIREMENTS FOR SCHOOLS

AN ACT to amend and reenact sections 18-12-06, 18-12-23, and 18-12-25 of the North Dakota Century Code, relating to construction of educational occupancies; and to repeal sections 15-35-01, 15-35-02, 15-35-03, 15-35-04, 15-35-05, 15-35-06, 18-12-07, 18-12-08, 18-12-09, 18-12-10, 18-12-11, 18-12-12, 18-12-13, 18-12-14, 18-12-15, 18-12-17, 18-12-18, 18-12-19, 18-12-20, and 18-12-21 of the North Dakota Century Code, relating to the construction of and fire prevention in educational occupancies.

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

SECTION 1. AMENDMENT. Section 18-12-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-12-06. Fire protection requirements Construction requirements. The following are the fire protection construction requirements which shall be included in the plans and specifications submitted for approval: schools are those contained within the state building code as defined in section 54-21.3-03.

- 1- Plans for additions to existing buildings shall include portions of the building being added to, showing existing exits and room occupancies which may be affected by such additions.
- 2- The following types of construction shall be as defined in the national building code recommended by the national board of fire underwriters:
 - a- Wood frame or ordinary construction shall be limited to one-story buildings of not over two classrooms.
 - b- Unprotected noncombustible or heavy timber construction shall be limited to one-story buildings.

- e- Protected noncombustible construction shall be limited to two-story buildings-
- d- Fire resistive construction - type A and type B shall not be limited in the size of the building-

For the purpose of determining the type of construction, a basement shall be considered a story when one-half or more of its clear height is above grade. All basement framing, walls, partitions, and ceilings shall be noncombustible type of construction-

- 3- In one-story construction, any open combustible attic sections, regardless of depth of area between the ceiling and roof, shall be subdivided into areas not exceeding three thousand square feet {278-71 square meters}, with noncombustible partitions-
- 4- Two hour firewalls with B labeled fire door with at least one and one-half hour rating and frame assemblies in openings shall be provided between school buildings of combustible construction and buildings of noncombustible construction-
- 5- Forming materials which are left in place as part of the permanent structure must be noncombustible in buildings of more than one story and noncombustible in one-story buildings in those areas required to be of a fire resistant nature-
- 6- In case of questions as to the interpretation of the law as to fire resistant materials, fire ratings established by the national board of fire underwriters and the national bureau of standards shall be used as a guide-
- 7- Subdivisions of a building of mixed occupancy which are separated by standard four hour firewalls shall be classified as separate buildings, and further provided, that any opening shall be protected by class A three hour closures-
- 8- In buildings where a fire resistive ceiling constitutes an essential part of a floor or roof assembly to meet the required fire resistant rating, it shall be installed as tested and may have openings to accommodate noncombustible piping, ducts, or electrical outlets. The aggregate area of such openings in the ceiling shall not exceed one hundred square inches {645-16 square centimeters} for each ninety square feet {8-36 square meters} of ceiling area, unless such equipment was a part of the test assembly. All duct openings larger than one hundred square inches {645-16 square centimeters} shall be protected with approved noncombustible fire dampers-

- 9- Partition construction of rooms having a capacity of less than two hundred persons separating them from corridors, shall have a fire rating of at least three-fourths hour, except doors. Such a separation may have one-fourth-inch {6-35-millimeter} wire glass in steel framing as a part of the partition with not more than a permissible ten percent of the aggregate wall area being combustible or where outside exits are provided from every room in the affected section, such partitions will not be required.

SECTION 2. AMENDMENT. Section 18-12-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-12-23. Electrical. All electrical wiring and apparatus shall be installed in accordance with the provisions of the state electrical law, rules, and regulations, and local ordinances, and the current edition of the National Electrical Code.

Electrical plans and specifications shall be reviewed by the state electrical board upon referral by the superintendent of public instruction, the board of higher education, and the state fire marshal, and complete inspection service with final certificate of compliance covering the electrical installation shall be made by the same agency, or by the local inspection authority where available.

In all school buildings an emergency lighting system shall be provided. All required exits shall be designated with illuminated exit signs and directional exit signs shall be installed where needed.

Exit emergency lighting circuits shall be installed in a metal raceway on separate circuits placed ahead of the main line switch.

No other wiring shall be in the same raceway or conduit which serves the exit and emergency lighting. All educational facilities shall be provided with exit marking, illumination of means of egress, and emergency lighting as provided for within the N.F.P.A. life safety code, standard 101, edition corresponding to that of the state building code as defined in section 54-21.3-03.

SECTION 3. AMENDMENT. Section 18-12-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-12-25. Reference data. The latest edition of the following data shall be used as reference and as an aid in the interpretation of this chapter:

1. National Building Code - national board of fire underwriters Uniform Building Code - international conference of building officials.
2. Building Exit Code The National Fire Codes - national fire protection association.

3. Fire Ratings of Materials - national board of fire underwriters - United States bureau of standards Uniform Mechanical Code - international conference of building officials.
4. National Electrical Code --national board of fire ~~underwriters~~ - national fire protection association.

SECTION 4. REPEAL. Sections 15-35-01, 15-35-02, 15-35-03, 15-35-04, 15-35-05, 15-35-06, 18-12-07, 18-12-08, 18-12-09, 18-12-10, 18-12-11, 18-12-12, 18-12-13, 18-12-14, 18-12-15, 18-12-17, 18-12-18, 18-12-19, 18-12-20, and 18-12-21 of the North Dakota Century Code are hereby repealed.

Approved March 1, 1985

FOOD, DRUGS, OILS, AND COMPOUNDS

CHAPTER 258

HOUSE BILL NO. 1590
(Sauter)

TITLE 19 MISCELLANEOUS CHANGES

AN ACT to create and enact a new subsection to section 19-18-02 of the North Dakota Century Code, relating to economic poisons; to amend and reenact sections 19-01-03, 19-01-04, 19-01-05, 19-01-07, 19-01-12, 19-01-14, 19-01-18, 19-02-16, 19-02-17, 19-02-20, 19-02.1-01, 19-02.1-04, 19-02.1-05, 19-02.1-06, 19-02.1-16, 19-02.1-21, subsection 5 of section 19-03.1-09, subsection 2 of section 19-03.1-13, section 19-03.1-16, subsection 1 of section 19-03.1-18, subdivision b of subsection 1 of section 19-03.1-24, sections 19-03.1-30, 19-03.1-32, subdivision a of subsection 1 of section 19-03.1-33, subsection 3 of section 19-03.1-35, paragraph 4 of subdivision e of subsection 1 of section 19-03.1-36, subsections 2 and 3 of section 19-03.1-37, sections 19-04-01, 19-07-01, 19-08-01, 19-08-04, 19-10-21, subsection 2 of section 19-13.1-03, sections 19-13.1-09, 19-13.1-11, 19-13.1-12, 19-14-03, 19-14-06, 19-14-08, 19-16.1-03, 19-17-02, 19-17-03, 19-17-04, subsection 8 of section 19-18-02, section 19-18-03, subsection 2 of section 19-18-04, sections 19-18-05, 19-18-06, 19-18-06.1, subsection 1 of section 19-18-07, sections 19-20.1-02, 19-20.1-03, 19-20.1-06, 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, subsection 5 of section 19-21-02, and section 19-21-04 of the North Dakota Century Code, relating to the state laboratories department; and to repeal section 19-17-06 of the North Dakota Century Code, relating to weights of containers.

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

SECTION 1. AMENDMENT. Section 19-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-03. Director of department - Appointment, bond, oath, salary. The commission shall appoint a director of the department who shall serve at the will of the commission. ~~He~~ The director shall act as secretary of the commission and shall keep such minutes and books as the commission shall determine. Subject to the supervision of the commission, ~~he~~ the director shall have general charge of the

department. Before assuming the duties of his the director's office, he the director shall furnish a bond in the sum of twenty-five thousand dollars for the faithful performance of his the director's duties and the proper accounting for all moneys collected in his the director's office. The premium for such bond shall be paid as an expense of the department. The director shall take the oath of office and file the same in the manner required of other state officers. He The director shall receive a salary within the amount appropriated for salaries by the legislative assembly.

SECTION 2. AMENDMENT. Section 19-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-04. Assistant director - Qualifications, appointment, bond, salary, duties. The commission shall appoint a competent chemist who shall be assistant director of the department. He The assistant director shall be designated as the state food commissioner and chemist and shall serve at the will of the commission. He The assistant director shall furnish a bond in the sum of ten thousand dollars conditioned for the faithful performance of his the assistant director's duties and the proper accounting for all moneys collected in his the assistant director's office, and shall qualify in the manner in which the director of the department is required to qualify. The annual salary of the assistant director shall be fixed by the commission. The assistant director shall have charge and supervision of all laboratory work and the laboratory equipment, and shall be in charge of the department in case of the director's absence or inability to act. He The assistant director shall have his the assistant director's office in the department.

SECTION 3. AMENDMENT. Section 19-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-05. Sheriff as local inspector - Compensation, duties. The director of the department shall appoint the sheriff of each county as the local inspector for his the sheriff's county. The sheriff, under the direction and supervision of the department, shall perform such duties and make such inspections as shall be assigned to him the sheriff by the department, and shall be responsible for the enforcement within his the sheriff's county of the directions given to him the sheriff. He The sheriff shall collect all fees and charges which may be collected under the provisions of this title or of any regulatory provision enforced by the department, and shall account to the department therefor on or before the first of each month and at such other times as may be required by the department. He The sheriff may call upon the state's attorney of his the sheriff's county and upon any other law enforcement officer of his the sheriff's county or of any city within his the sheriff's county to assist him the sheriff in the enforcement and administration of the directions of the department. The sheriff and those assisting him the sheriff shall receive no additional compensation for work performed under the directions of the department but shall be allowed traveling expenses allowed in the performance of the other duties of their respective offices. Such traveling expenses shall

be paid out of the appropriations made for the department by the legislative assembly.

* SECTION 4. AMENDMENT. Section 19-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-07. Fees - Disposition. All revenues received and fees and charges collected under the provisions of this title shall be properly accounted for daily by the assistant director and employees to the director of the department and by ~~him~~ the assistant director recorded and entered upon ~~his~~ the assistant director's books by counties from which the fees and charges are received. The director shall forward all moneys so collected to the state treasurer monthly, and the treasurer shall place the same in the general fund of the state.

SECTION 5. AMENDMENT. Section 19-01-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-12. Seizure of unlawful products - Search warrant. A search warrant may be issued by any judge, including a county or municipal judge, whenever probable cause is shown by affidavit or deposition under oath that any article, product, composition, or thing is being kept or is present upon certain premises which shall be particularly described or is in possession of any person who shall be named in the affidavit or deposition, and that such article, product, composition, or thing, is not in compliance with, or is being used or possessed contrary to, any applicable provision of this title or of any rule, regulation, standard, tolerance, or definition issued pursuant thereto. The search warrant shall be in substantially the form described in the North Dakota Rules of Criminal Procedure. It shall particularly describe the premises or the person who has possession of such article and shall be signed by the judge with the name of ~~his~~ the judge's office, and shall be directed to any peace officer of the county or to the department or any of its agents. The warrant shall command the peace officer or agent of the department to search the persons or places named and to seize all and any products, articles, compositions, or things of the kind described therein which may be held in violation of any applicable provision of this title, and to bring such products, articles, compositions, or things before the judge.

SECTION 6. AMENDMENT. Section 19-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-14. Service and return of search warrant and proceedings thereon. The provisions of sections 29-29-01 and 29-29-18 and rule 41 of the North Dakota Rules of Criminal Procedure, as to the service and return of a search warrant, and hearing, and return thereon to the district court, shall govern in cases of search warrants issued pursuant to the provisions of this chapter except that testimony of witnesses need not be reduced to writing. If the magistrate finds that the property seized is property of the kind described in the search warrant and that there is probable cause to believe that the

* NOTE: Section 19-01-07 was also amended by section 2 of Senate Bill No. 2012, chapter 54.

grounds on which the search warrant was issued existed, he the magistrate shall send the property so seized to the district court, together with his the magistrate's return. If he the magistrate finds that there is not probable cause to believe that the grounds on which the search warrant was issued existed, he the magistrate shall order the property returned to the person from whom it was taken.

SECTION 7. AMENDMENT. Section 19-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-18. Duties as to weights and measures. When requested so to do by the public service commission, the director of the department, when it is possible and practicable to do so, shall direct one or more of the employees of the department to perform such duties as may be required relating to the inspection and licensing of weights and measures. Each employee of the department, when engaged in the performance of such duties, shall have the same powers and shall charge and collect the same fees for the services he the employee may perform as are provided in the case of an inspector in chapter 64-02. All fees, licenses, and other charges collected by the department in performing such additional duties shall be considered as collections made by the department to be accounted for and disposed of as provided in this chapter.

SECTION 8. AMENDMENT. Section 19-02-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02-16. Bread - How sold. No person shall sell, offer, or expose for sale, or have in his their possession with intent to sell or transport, any bread, the loaf of which does not weigh either sixteen ounces or twenty-four ounces aveirdupois {453-59 grams or 680-39 grams} or a whole multiple of sixteen ounces aveirdupois {453-59 grams} eight ounces or more [226.8 grams]. The weights shall apply alike to each unit of twin or multiple loaves. A loaf shall be of the required weight at any period from the time of baking the same until twelve hours thereafter. The required weight standards shall apply alike to wheat bread, white bread, milk bread, rye bread, raisin bread, currant bread, brown bread, graham bread, whole wheat bread, and other similar kinds of farinaceous substances baked in loaves and known and designated as bread. The average weight of loaves shall be as often above as below the permissible weights. The weight standards defined in this section shall not be construed to apply to cakes, buns, biscuits, and similar small unit products.

SECTION 9. AMENDMENT. Section 19-02-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02-17. Importation and sale of infected fruit a misdemeanor. Any person who shall import into this state, sell, offer for sale, or have in his their possession for sale or barter, any fruit which has been infected or infested with peach blight, peach mildew, peach twig borer, San Jose scale or other scale insects, apple scab,

codling moth larva or larvae, shall be guilty of a class B misdemeanor. If fruit bears the mark of any of the infections or infestations mentioned in this section, the mark shall be conclusive evidence that the fruit is infected or infested within the meaning of this section.

SECTION 10. AMENDMENT. Section 19-02-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02-20. Person affected with contagious disease not to be employed in food establishment - Examinations - Penalty. No person who is affected with any contagious or infectious disease in a communicable form shall be employed, or permitted to remain as an employee, in any food establishment. If an inspector or agent of the department has reason to suspect that an employee in any such establishment is affected with any such disease, ~~he~~ the inspector or agent may require a medical examination of such employee and a certificate of health with reference to ~~him~~ the employee from the employer of such employee. The examination shall be made by a physician approved by the department, and the cost thereof shall be borne by the employer. If an employer fails to provide such a health certificate for himself or for an employee within a reasonable time after being notified to do so, ~~he~~ the employer shall be deemed guilty of a class B misdemeanor.

SECTION 11. AMENDMENT. Section 19-02.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-01. Definitions. For the purpose of this chapter:

1. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.
2. "Color" includes black, white, and intermediate grays.
3. "Color additive" means a material which:
 - a. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or
 - b. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto, except that such term does not include any material which has been or hereafter is exempted under the federal act.

4. "Contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.
5. "Cosmetic" means:
 - a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance;
 - b. Articles intended for use as a component of any such articles, except that such term shall not include soap.
6. "Department" means the state laboratories department.
7. "Device", except when used in the first paragraph following subsection 21 of this section and in subsection 10 of section 19-02.1-02, subsection 6 of section 19-02.1-10, subsections 3 and 16 of section 19-02.1-14, and subsection 3 of section 19-02.1-18, means instruments, apparatus and contrivances, including their components, parts, and accessories, intended:
 - a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - b. To affect the structure or any function of the body of man or other animals.
8. "Drug" means:
 - a. Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
 - b. Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - c. Articles, other than food, intended to affect the structure or any function of the body of man or other animals;
 - d. Articles intended for use as a component of any article specified in subdivision a, b, or c, but does not include devices or their components, parts, or accessories. Provided, however, that "drug", for the purpose of this chapter, and as defined by this subsection, shall not include those controlled

substances or drugs regulated by or under the authority of the Uniform Controlled Substances Act, with respect to such drugs, the Uniform Controlled Substances Act shall take precedence over and supplant the provisions of this chapter only so far as its authority and control is synonymous with the provisions of this chapter.

9. "Federal act" means the federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 301 et seq.].
10. "Food" means:
 - a. Articles used for food or drink for man or other animals;
 - b. Chewing gum;
 - c. Articles used for components of any such article.
11. "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures, or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use, except that such term does not include:
 - a. A pesticide chemical in or on a raw agricultural commodity;
 - b. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
 - c. A color additive; or
 - d. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, [21 U.S.C. 451 et seq.]; or the Meat Inspection Act of March 4, 1907 [34 Stat. 1260, as amended and extended; 21 U.S.C. 71 et seq.].

12. "Immediate container" does not include package liners.
13. "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.
14. "Labeling" means all labels and other written, printed, or graphic matter:
 - a. Upon an article or any of its containers or wrappers; or
 - b. Accompanying such article.
15. "Manufacture, compound, or process" shall include repackaging or otherwise changing the container, wrapper, or labeling of any drug package in the furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer, and the term "manufacturers, compounders, and processors" shall be deemed to refer to persons engaged in such defined activities.
16. "New drug" means:
 - a. Any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.
17. "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.
18. "Person" includes individual, partnership, corporation, and association.

19. "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of chapter 19-18, and which is used in the production, storage, or transportation of raw agricultural commodities.
20. "Practitioner" means a physician, dentist, veterinarian, or other person licensed in this state to prescribe or administer drugs which are subject to this chapter.
21. "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

Nothing in subsection 20 21 shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

* SECTION 12. AMENDMENT. Section 19-02.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-04. Penalties and guarantee.

1. Any person who violates any of the provisions of subsections 1 through 14 of section 19-02.1-02 shall be guilty of a class B misdemeanor.
2. No person shall be subject to the penalties of subsection 1, for having violated subsection 1 or 3 of section 19-02.1-02 if he the person established a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of North Dakota from whom he the person received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.
3. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him the person of such false advertisement, unless he the person has refused, on the request of the department to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of North Dakota who caused him the person to disseminate such advertisement.
4. Repealed by S.L. 1971, ch. 235, § 49.

SECTION 13. AMENDMENT. Section 19-02.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-05. Seizure.

1. Whenever a duly authorized agent of the department finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he the authorized agent shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to

* NOTE: Section 19-02.1-04 was also amended by section 1 of Senate Bill No. 2195, chapter 259.

- remove or dispose of such detained or embargoed article by sale or otherwise without such permission.
2. When an article detained or embargoed under subsection 1 has been found by such agent to be adulterated, or misbranded, he the authorized agent shall petition the judge of the district court in the county in which the article is detained or embargoed for a label for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he the authorized agent shall remove the tag or other marking.
 3. If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his the claimant's agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decrees and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to claimant thereof for such labeling or processing under the supervision of an agent of the department. The expense of such supervision shall be paid by claimant. Such shall be returned to the claimant of the article on the representation to the court by the department that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.
 4. Whenever the state laboratories director or any of his the state laboratories director's authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the state laboratories director or his the state laboratories director's authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.
 5. Any person, firm, or corporation having an interest in the alleged article, equipment, or other thing proceeded against, or any person, firm, or corporation against whom a civil or criminal liability would exist if said merchandise is in violation of section 19-02.1-02 may, within twenty days following the seizure, appear and file

answer to the complaint. The answer shall allege the interest or liability of the party filing it. In all other respects, the issue shall be made up as in other civil actions.

6. Any article, equipment, conveyance, or other thing condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid to the treasurer of the state; but such article, equipment, or other thing shall not be sold under such decree contrary to provisions of this chapter.
7. Whenever in any proceedings under this section the condemnation of any equipment or conveyance or other thing, other than a drug, is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court all of the following:
 - a. He The claimant has not committed or caused to be committed any prohibited act referred to in chapter 19-03.1, and has no interest in any drug or controlled substance referred to therein.
 - b. He The claimant has an interest in such equipment, or other thing as owner or lienor or otherwise, acquired by ~~him~~ the claimant in good faith.
 - c. He The claimant at no time had any knowledge or reason to believe that such equipment, conveyance, or other thing was being or would be used in, or to facilitate, the violation of the laws of this state relating to depressant, stimulant, or hallucinogenic drugs or counterfeit drugs.
8. When a decree of condemnation is entered against the article, equipment, conveyance, or other thing, court costs and fees and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

* SECTION 14. AMENDMENT. Section 19-02.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-06. Prosecutions - State's attorney. It shall be the duty of each state's attorney to whom the department reports any violation of this chapter occurring in ~~his~~ the state's attorney's county, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

* NOTE: Section 19-02.1-06 was also amended by section 2 of Senate Bill No. 2195, chapter 259.

SECTION 15. AMENDMENT. Section 19-02.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-16. New drugs.

1. No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless:
 - a. An application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act; or
 - b. When not subject to the federal act, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the department an application setting forth:
 - (1) Full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use⁷;
 - (2) A full list of the articles used as components of such drug⁷;
 - (3) A full statement of the composition of such drug⁷;
 - (4) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drugs⁷;
 - (5) Such samples of such drug and of the articles used as components thereof as the department may require⁷;
 - (6) Specimens of the labeling proposed to be used for such drug.
2. An application provided for in subdivision b of subsection 1 shall become effective on the one hundred eightieth day after the filing thereof, except that if the department finds, after due notice to the applicant and giving ~~him~~ the applicant an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, ~~he~~ the state food commissioner and chemist shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

3. An order refusing to permit an application under this section to become effective may be revoked by the department.
4. This section shall not apply:
 - a. To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act;
 - b. To a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act; or
 - c. To any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902, U.S.C. 1958 ed. Title 42 Chapter 6A Sec. 262; or
 - d. To any drug which is subject to subsection 5 of section 19-02.1-14.
5. The provisions of subsection 16 of section 19-02.1-01 shall not apply to any drug which, on October 9, 1962, or on the date immediately preceding the enactment of this subsection:
 - a. Was commercially sold or used in this state or in the United States;
 - b. Was not a new drug as defined by subsection 16 of section 19-02.1-01 as then in force;
 - c. Was not covered by an effective application under section 19-02.1-16 or under section 505 of the federal act, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug.

SECTION 16. AMENDMENT. Section 19-02.1-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-21. Inspections - Examinations. The state laboratories director or ~~his~~ the state laboratories director's duly authorized agent has free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in

commerce, for the purpose of inspecting such factory, warehouse, establishment, or vehicle to determine if this chapter is being violated and to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample.

The state laboratories director shall make or cause to be made examinations of samples secured under this section to determine whether or not this chapter is being violated.

Inspections of slaughterhouses, meatpacking, and meat processing plants where cattle, swine, sheep, goats, horses, or other equines are slaughtered for human food or where the carcass or the parts thereof, meat, or meat food products are salted, canned, packed, smoked, cured, rendered, or otherwise processed or prepared for human food, may not be performed under this chapter if the slaughterhouses, meatpacking, or meat processing plants are inspected under the North Dakota Meat Inspection Act, or the Federal Meat Inspection Act, as amended [34 Stat. 1260-65; 21 U.S.C. 71-91].

* SECTION 17. AMENDMENT. Subsection 5 of section 19-03.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
 - a. Not more than 1.80 grams of codeine, ~~or any of its salts,~~ per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
 - b. Not more than 1.80 grams of codeine, ~~or any of its salts,~~ per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - c. Not more than 300 milligrams of dihydrocodeinone, ~~or any of its salts,~~ per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
 - d. Not more than 300 milligrams of dihydrocodeinone, ~~or any of its salts,~~ per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - e. Not more than 1.80 grams of dihydrocodeine, ~~or any of its salts,~~ per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active,

* NOTE: Section 19-03.1-09 was also amended by section 3 of Senate Bill No. 2498, chapter 265, and amended by section 8 of Senate Bill No. 2381, chapter 262.

- nonnarcotic ingredients in recognized therapeutic amounts.
- f. Not more than 300 milligrams of ethylmorphine ~~or any of its salts~~, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.
 - g. 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.
 - h. Not more than 50 milligrams of morphine, ~~or any of its salts~~, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SECTION 18. AMENDMENT. Subsection 2 of section 19-03.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 2. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:
 - a. Not more than 200 milligrams of codeine, ~~or any of its salts~~, per 100 milliliters or per 100 grams.
 - b. Not more than 100 milligrams of dihydrocodeine, ~~or any of its salts~~, per 100 milliliters or per 100 grams.
 - c. Not more than 100 milligrams of ethylmorphine ~~or any of its salts~~, per 100 milliliters or per 100 grams.
 - d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
 - e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
 - f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

*** SECTION 19. AMENDMENT.** Section 19-03.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 19-03.1-16 was also amended by section 14 of Senate Bill No. 2381, chapter 262, and amended by section 6 of Senate Bill No. 2498, chapter 265.

19-03.1-16. Registration requirements.

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the department in accordance with its rules.
2. Persons registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this chapter.
3. The following persons need not register and may lawfully possess controlled substances under this chapter:
 - a. An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he an agent or employee is acting in the usual course of his an agent's or employee's business or employment.
 - b. A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.
 - c. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.
4. The department may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.
5. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.
6. The department may inspect the establishment of a registrant or applicant for registration in accordance with the state department of health laboratories department rule.

* SECTION 20. AMENDMENT. Subsection 1 of section 19-03.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 19-03.1-18 was also amended by section 16 of Senate Bill No. 2381, chapter 262.

1. A registration under section 19-03.1-17 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department upon a finding that the registrant:
 - a. Has furnished false or fraudulent material information in any application filed under this chapter;
 - b. Has been convicted of a felony under any state or federal law relating to any controlled substance; or
 - c. Has had ~~his~~ the registrant's federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

SECTION 21. AMENDMENT. Subdivision b of subsection 1 of section 19-03.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. Who is a registrant, to manufacture a controlled substance not authorized by ~~his~~ their registration, or to distribute or dispense a controlled substance not authorized by ~~his~~ their registration to another registrant or other authorized person;

SECTION 22. AMENDMENT. Section 19-03.1-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-30. Conditional discharge for possession as first offense. Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection 3 of section 19-03.1-23, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place ~~him~~ the person on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against ~~him~~ the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the extended sentence which may be imposed under section 12.1-32-09. There may be only one discharge and dismissal under this section with respect to any person.

SECTION 23. AMENDMENT. Section 19-03.1-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-32. Powers of enforcement personnel - Search warrants.

1. Any officer of the state bureau of criminal investigation or the state drug enforcement unit designated by the attorney general of this state may:
 - a. Carry firearms in the performance of ~~his~~ official duties.
 - b. Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.
 - c. Make arrests without warrant for any offense under this chapter committed in ~~his~~ the officer's presence, or if ~~he~~ the officer has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.
 - d. Make seizures of property pursuant to this chapter.
 - e. Perform other law enforcement duties as the attorney general designates.
2. A search warrant relating to offenses involving controlled substances may be issued and executed at any time of the day or night, if the judge or magistrate issuing the warrant so specifies in the warrant.
3. Any officer authorized to execute a search warrant, without notice of ~~his~~ the officer's authority and purpose, may break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or magistrate issuing the warrant has probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any ~~officer~~ officers acting under such warrant, as soon as practicable after entering the premises, shall identify ~~himself~~ themselves and state the purpose of ~~his~~ entering the premises and ~~his~~ the authority for doing so.

SECTION 24. AMENDMENT. Subdivision a of subsection 1 of section 19-03.1-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. A district judge within ~~his~~ a district judge's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections

authorized by this chapter or rules hereunder and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules thereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

* SECTION 25. AMENDMENT. Subsection 3 of section 19-03.1-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the department nor may ~~he~~ the practitioner be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

SECTION 26. AMENDMENT. Paragraph 4 of subdivision e of subsection 1 of section 19-03.1-36 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- (4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if ~~he~~ they neither had knowledge of nor consented to the act or omission.

SECTION 27. AMENDMENT. Subsections 2 and 3 of section 19-03.1-37 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, ~~he~~ the person is presumed not to be the holder of the registration or form. The burden of proof is upon ~~him~~ the person to rebut the presumption.
3. No liability is imposed by this chapter upon any authorized state, county, or municipal officer, engaged in the lawful performance of ~~his~~ their duties.

SECTION 28. AMENDMENT. Section 19-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 19-03.1-35 was also amended by section 22 of Senate Bill No. 2381, chapter 262.

19-04-01. Selling certain enumerated poisons regulated - Penalty. Every person who, at retail, without receiving a physician's prescription specifying that such prescription shall contain a poison and giving the name thereof, sells, furnishes, gives away, or delivers to another:

1. Arsenic or any preparation thereof, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia, or any other poison or vegetable alkaloid, or the salts thereof, or essential oil of bitter almonds; or
2. Aconite, belladonna, colchicum, conium, formaldehyde, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis, or the pharmaceutical preparations of any of them, croton oil, chloroform, sulfate of zinc, mineral acids, carbolic acid, or oxalic acid,

without affixing to the bottle, box, vessel, or package containing the same, the name of the contents, the word "poison", and his the person's name and place of business, is guilty of a class A misdemeanor. Any storekeeper, however, may sell in original, unbroken packages, fungicides and insecticides, including formaldehyde and Paris green, generally used for agricultural purposes which have been designated as such by the state board of pharmacy.

SECTION 29. AMENDMENT. Section 19-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-07-01. Eggs to be graded - Exemption. All eggs sold or offered for sale to an ultimate consumer in this state must be candled, graded, and labeled with the correct grade designation. "Eggs" in this chapter means eggs in the shell which are the product of the domesticated chicken. A producer of eggs when selling only eggs of his the producer's own flock production is exempt from the provisions of this chapter.

SECTION 30. AMENDMENT. Section 19-08-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-08-01. Certain beverages unlawful to sell. A person may not sell, offer, or expose for sale, or have in his possession with intent to sell within this state, any beverage of whatever nature that contains any ingredient that is injurious to health, or is adulterated, misbranded, or insufficiently or improperly labeled within the meaning of chapter 19-02.1, or that is not licensed as provided in this chapter.

SECTION 31. AMENDMENT. Section 19-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-08-04. License required. The department may, in its discretion, require manufacturers, importers, jobbers, or other retailers to furnish suitable samples to the department for inspection and chemical analysis. If any beverage does not meet all requirements of law, the department shall refuse to license it and shall prevent its sale. The license fee shall be paid annually during the month of December or prior to placing the beverage on the market. The license shall expire December thirty-first next following its issuance. If the manufacturer or jobber secures a license for a product, subsequent sellers, including retailers and dispensers, need not again secure a license for the same product, and no dispenser shall be required to secure a license for a product prepared for his the dispenser's own use from a product already licensed.

SECTION 32. AMENDMENT. Section 19-10-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-21. Bond may be required of dealer in petroleum products. The director of the department, if he the director deems it necessary, may require any person importing gasoline, kerosene, tractor fuel, heating oil, or diesel fuel for sale or consignment within this state or in possession of any such petroleum products with intent to sell the same, to deposit with the department a surety bond payable to the state of North Dakota in the penal sum of five hundred dollars, or in twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of receipts of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and the payment of all inspection fees provided for in this chapter. The bond shall be approved as to its sufficiency by the department. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

SECTION 33. AMENDMENT. Subsection 2 of section 19-13.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A distributor shall not be required to register any brand of commercial feed which 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. The department is empowered to refuse registration of any application not in compliance with the provisions of this chapter and to cancel any registration subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration shall be refused or canceled until the registrant shall have been given opportunity to

be heard before the department and to amend ~~his~~ the application in order to comply with the requirements of this chapter.

SECTION 34. AMENDMENT. Section 19-13.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-13.1-09. Inspection, sampling, analysis. It shall be the duty of the state laboratories director, who may act through ~~his~~ the director's authorized agent, 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 ~~he~~ the director may deem necessary to determine whether such feeds are in compliance with the provisions of this chapter. The state laboratories director, individually or through ~~his~~ the director's agent, 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.

SECTION 35. AMENDMENT. Section 19-13.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-13.1-11. Detained commercial feeds. When the state laboratories director or ~~his~~ the director's authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, ~~he~~ the director may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or the court. The department shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty days, the department may begin, or upon request of the distributor shall begin, proceedings for condemnation.

Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the state laboratories director to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

SECTION 36. AMENDMENT. Section 19-13.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-13.1-12. Penalties. Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent the state laboratories director or his the state laboratories director's duly authorized agent in performance of his the state laboratories director's duty 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 state laboratories director shall be accepted as prima facie evidence of the composition.

Nothing in this chapter shall be construed as requiring the state laboratories director or his the state laboratories director's representative to seek prosecution or the institution of seizure proceedings based on minor violations of the chapter when he the state laboratories director believes that the public interest will be best served by a suitable notice of warning in writing.

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 his the distributor's view to the department.

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 or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

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 37. AMENDMENT. Section 19-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-14-03. Regulations for sale. No person shall sell, offer, or expose for sale, have in his possession with intent to sell, any livestock medicine:

1. Which is sold under a name, brand, trademark, or labeling which is misleading, deceptive, or false, or which is dangerous to animals under the conditions of use prescribed in the labeling or advertising thereof.
2. Which purports to cure ~~infectious abortion, hog cholera, fowl cholera, tuberculosis, foot and mouth disease, roup, white diarrhea, or any other infectious disease~~ of domestic animals for which no genuine cure is known.
3. Which has not been registered by the department for sale in this state. The certificate of registration shall include a disclosure of the name and quantity or proportion of each active ingredient, and the names of the inert ingredients or fillers.
4. Which does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
 - a. The common name in English of all active ingredients in the order of their predominance in the product;
 - b. The total quantity or proportion of active ingredients, and the total quantity or proportion of inert ingredients, provided, however, if such statement of ingredients alone be insufficient to prevent fraud or deception or to convey to the purchaser the true nature of the product, the percentage of each ingredient shall in addition be required. A statement of the actual percentage or relative amounts of each ingredients active and inert. In the case of certain products (such as coated medicinal tablets) it may be impractical to state the quantity or proportion of inert ingredients and exemptions shall be established by regulations issued by the food commissioner and chemist;
 - c. A statement of the actual percentage or relative amounts of each of the following substances if present: All mineral (inorganic) acids, caustic alkalies, the elements copper, mercury, arsenic,

antimony, fluorine, or compounds thereof; tobacco; opium; belladonna; nux vomica; pilocarpus; santonica; area nut; chenopodium; digitalis; strephanthus; calabar bean; aconite; veratrum; croton oil; ergot; cotton root bark; cantharides; carbon disulphide; carbon tetrachloride; tetrachloroethylene; or derivatives thereof;

- d- The net contents, by weight, measure, or numerical count of such package;
 - e- d. The name and principal address of the manufacturer or person responsible for placing such livestock medicine on the market; and
 - f- e. Complete and explicit directions for use of such medicine.
5. When the contents of the package as originally put up have been removed in whole or in part, and other contents shall have been placed in such package.

SECTION 38. AMENDMENT. Section 19-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-14-06. Department may adopt rules and regulations, take testimony, grant public hearings. The department may adopt rules and regulations pursuant to chapter 28-32 governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter, ~~but no such rule or regulation shall impose any requirement for registration other than is provided by section 19-14-03.~~ It may take expert and other testimony whenever it deems such testimony advisable and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

SECTION 39. AMENDMENT. Section 19-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-14-08. Penalty. Any person who shall sell, offer, or expose for sale, or have in his possession with intent to sell, any livestock medicine in violation of any of the provisions of this chapter, or who shall willfully and falsely represent that any livestock medicine is registered for sale in this state when in fact it is not so registered, shall be guilty of a class B misdemeanor.

*** SECTION 40. AMENDMENT.** Section 19-16.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-03. Registration. Before any antifreeze may be distributed in this state, the manufacturer or person whose name appears on the label shall make application to the department on

- * NOTE: Section 19-16.1-03 was also amended by section 1 of Senate Bill No. 2210, chapter 266.

forms provided by the latter for registration for each antifreeze which he the manufacturer or person whose name appears on the label desires to distribute. All registrations expire on June thirtieth of each year. The application shall be accompanied by specimens or facsimiles of its labeling, an inspection fee of forty dollars for each product, and by a properly labeled sample of the antifreeze. The department shall inspect, test, or analyze the antifreeze and review the label. If the antifreeze and labeling is not adulterated or misbranded, the department shall issue a certificate of registration, authorizing the distribution of such antifreeze in this state for one year. If the antifreeze or label is not in conformity with the law, the department shall refuse to register the antifreeze and shall return the application to the applicant, stating the reasons therefor. The department shall remit inspection fees received by the department to the state treasurer for deposit in the state general fund.

SECTION 41. AMENDMENT. Section 19-17-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-17-02. Flour standards. It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour (as defined in section 19-17-01) unless the following vitamins and minerals are contained in each pound {453-59 grams} of such flour- not less than 2-0 milligrams and not more than 2-5 milligrams of thiamine; not less than 1-2 milligrams and not more than 1-5 milligrams of riboflavin; not less than 16-0 milligrams and not more than 20-0 milligrams of niacin or niacin-amide; not less than 13-0 milligrams and not more than 16-5 milligrams of iron {Fe}; except in the case of self-rising flour which in addition to the above ingredients shall contain not less than 500 milligrams and not more than 1500 milligrams of calcium {Ca}; provided, unless, vitamin and mineral levels are in conformity with the legally established governing interstate shipments of enriched flour, however, that the terms of this section shall not apply to flour sold to distributors, bakers, or other processors, if the purchaser furnishes to the seller a certificate in such form as the commissioner shall by regulation prescribe, certifying that such flour, will be (1) resold to a distributor, baker, or other processor, or (2) used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this chapter, or (3) used in the manufacture of products other than flour, white bread, or rolls. It shall be unlawful for any such purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed.

SECTION 42. AMENDMENT. Section 19-17-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-17-03. White bread standards. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls (as defined in section 19-17-01) unless the following vitamins and minerals are contained in each pound {453-59 grams} of such bread or rolls- not

less than 1-1 milligrams and not more than 1-8 milligrams of thiamine; not less than 0-7 milligrams and not more than 1-6 milligrams of riboflavin; not less than 10-0 milligrams and not more than 15-0 milligrams of niacin; not less than 8-0 milligrams and not more than 12-5 milligrams of iron (Fe) vitamin and mineral levels are in conformity with the legally established governing interstate shipments of enriched flour.

SECTION 43. AMENDMENT. Section 19-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-17-04. Enforcement.

1. The commissioner shall enforce this chapter and he the commissioner may adopt rules, regulations, and orders pursuant to chapter 28-32 for the efficient enforcement of this chapter.
2. Whenever the vitamin and mineral requirements set forth in sections 19-17-02 and 19-17-03 are no longer in conformity with the legally established standards governing the interstate shipments of enriched flour and enriched white bread or enriched rolls, the commissioner, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this chapter, shall modify or revise such requirements to conform with amended standards governing interstate shipments.
3. In the event of findings by the commissioner that there is an existing or imminent shortage of any ingredient required by sections 19-17-02 and 19-17-03, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this chapter, the commissioner shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredients from flour or white bread or rolls, and if he the commissioner finds it necessary or appropriate, excepting such foods from labeling requirements until the further order of the commissioner. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the commissioner on his the commissioner's own motion may, and upon receiving the sworn statements of ten or more persons subject to this chapter that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence; and shall make findings based upon the evidence presented. The commissioner shall publish notice of any such hearing at least ten days prior thereto. Whenever the

commissioner has reason to believe that such shortage no longer exists, he the commissioner shall hold a public hearing, after at least ten days' notice shall have been given, at which any interested person may present evidence, and he the commissioner shall make findings based upon the evidence so presented. If ~~his~~ the commissioner's findings be that such shortage no longer exists, he the commissioner shall issue an order to become effective not less than thirty days after the publication thereof, revoking such previous order; provided, however, that undisposed floor stocks of flour on hand at the effective date, of such revocation order, or flour manufactured prior to such effective date, for sale in this state may thereafter be lawfully sold or disposed of.

4. For the purpose of this chapter, the commissioner, or such officers or employees under ~~his~~ the commissioner's supervision as he the commissioner may designate, is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread, or rolls therein, and all pertinent equipment, materials, containers, and labeling.

SECTION 44. AMENDMENT. Subsection 8 of section 19-18-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "Economic poison" shall mean any substance intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, snails, slugs, fungi, weeds, or other forms of plant or animal life or viruses, ~~except viruses on or in living man or other animals, which the commissioner shall declare to be a pest~~ bacteria, or other micro-organisms; and any substance intended for use as a plant regulator, defoliant, or desiccant.

SECTION 45. A new subsection to section 19-18-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Pest" shall mean any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, vires, bacteria, or other micro-organisms except viruses, bacteria, or other micro-organisms on or in living man or other living animals.

* SECTION 46. AMENDMENT. Section 19-18-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 19-18-03 was also amended by section 1 of House Bill No. 1538, chapter 267.

19-18-03. **Prohibited acts.** No person shall distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

1. Any economic poison which has not been registered pursuant to the provisions of section 19-18-04, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration; provided, that in the discretion of the commissioner, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.
2. Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:
 - a. The name and address of the manufacturer, registrant, or person for whom manufactured;
 - b. The name, brand, or trademark under which said article is sold; and
 - c. The net weight or measure of the content subject, however, to such reasonable variations as the commissioner may permit.
3. Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 19-18-05, unless the label shall bear, in addition to any other matter required by this chapter:
 - a. The skull and crossbones;
 - b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and
 - c. A statement of an antidote for the economic poison.
4. The economic poison commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder economic poison which the commissioner,

after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, by regulation, shall require to be distinctly colored or discolored; unless it has been so colored or discolored. The commissioner may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he the commissioner determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

5. Any economic poison which is adulterated or misbranded, or any device which is misbranded.

No person shall detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this chapter. No person shall use for his their own advantage or reveal other than in response to a proper subpoena, except to a physician or other qualified person for use in the preparation of an antidote, any information relative to the formula of any product acquired by authority of subsection 4.

SECTION 47. AMENDMENT. Subsection 2 of section 19-18-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Give the name and brand, if any, of each product registered, together with an ingredient statement of each product registered in accordance with the provisions of subsection 13 of section 19-18-02, and accompanying each registration application there shall be filed with the commissioner a label of each product so registered. If the commissioner finds that the application conforms to law, he the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commission and the commissioner the application is denied, the product shall not be offered for sale.

SECTION 48. AMENDMENT. Section 19-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-05. Determinations - Rules and regulations - Uniformity. The commissioner is authorized, after opportunity for a hearing:

1. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances.

2. To determine whether economic poisons are highly toxic to man and whether the use thereof should be restricted.
3. To determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of subsection 4 of section 19-18-03.

The commissioner may adopt appropriate rules and regulations pursuant to chapter 28-32 for carrying out the provisions of this chapter, including rules and regulations providing for the collection and examination of samples of economic poisons or devices, and also may adopt such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States ~~department of agriculture~~ environmental protection agency with respect to economic poisons in order that there may be uniformity between the requirements of the several states and the federal government.

SECTION 49. AMENDMENT. Section 19-18-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-06. Enforcement. The examination of economic poisons or devices shall be made under the direction of the commissioner for the purpose of determining whether they comply with the requirements of this chapter. If it shall appear from such examination that an economic poison or device fails to comply with the provisions of this chapter, and the commissioner contemplates instituting criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present ~~his~~ their views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the commissioner it shall appear that the provisions of the chapter have been violated by such person, then the commissioner shall refer the facts to the state's attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article. Nothing in this chapter shall be construed as requiring the commissioner to report for prosecution or for the institution of libel proceedings minor violations of the chapter whenever ~~he~~ the commissioner believes that the public interests will be best served by a suitable notice of warning in writing. Each state's attorney to whom any such violation is reported shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction without delay. The commissioner, by publication in such manner as ~~he~~ the commissioner may prescribe, shall give notice of all judgments entered in actions instituted under the authority of this chapter.

SECTION 50. AMENDMENT. Section 19-18-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-06.1. "Stop-sale" orders. The department may issue and enforce a stop-sale order to the owner or custodian of any economic

poison when the department finds that the product is being offered for sale in violation of the provisions of this chapter, and the order shall direct that the product ~~be~~ be held at a designated place until released in writing by the department. The owner or custodian of such product shall have the right to petition a court of competent jurisdiction in the county where the product is found for an order releasing the product for sale in accordance with the findings of the court.

SECTION 51. AMENDMENT. Subsection 1 of section 19-18-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier, upon request, shall permit the commissioner or ~~his~~ the commissioner's designated agent to copy all records showing the transactions in and movement of the articles.

*** SECTION 52. AMENDMENT.** Section 19-20.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-02. Definitions of words and terms. When used in this chapter:

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 plant substance.
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.

*** NOTE:** Section 19-20.1-02 was also amended by section 2 of Senate Bill No. 2238, chapter 268.

- 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.
4. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer or soil amendments, auxiliary soil and plant substances, or who sells commercial fertilizer or soil amendments or auxiliary soil and plant substances in this state.
5. "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 analysis" shall mean 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.
7. "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 media announcements used in promoting the sale thereof.
8. "Licensee" means any person licensed by the department as a distributor of agricultural fertilizer, soil amendment, auxiliary soil and plant substance.
9. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizer

- materials, soil amendment, auxiliary soil and plant substance.
10. "Official sample" means any sample of commercial fertilizer or soil amendment, auxiliary soil and plant substance, taken by the department and designated as "official" by the department.
 11. "Percent" or "percentage" means the percentage by weight.
 12. "Primary plant nutrients" are nitrogen, phosphoric acid, and potash.
 13. "Registrant" means the person who registers commercial fertilizer or soil amendments, auxiliary soil and plant substance under the provisions of this chapter.
 14. "Sell" when applied to commercial fertilizer or soil amendments, auxiliary soil and plant substance 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 for sale, exchange, or distribution.
 15. "Small package fertilizer" means fertilizer sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.
 16. "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.
 17. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

SECTION 53. AMENDMENT. Section 19-20.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-03. **Registration.** Each brand and grade of commercial fertilizer sold as small package fertilizer or specialty fertilizer, each soil amendment, auxiliary soil and plant substance, and each brand and grade of fertilizer material except unmanipulated animal and vegetable manures, shall be registered before being distributed in this state. The application for registration shall be submitted to the department on a form prescribed by the department and shall be accompanied by a fee of twenty-five dollars. Upon approval by the department, a copy of the registration shall 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 not be required to register any brand of commercial fertilizer or soil amendment, auxiliary soil and plant substance which is already registered under this chapter by another person, providing the label complies with the issued registration.

* **SECTION 54. AMENDMENT.** Section 19-20.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-06. **Inspection fees and tonnage reports.** There shall be paid to the department for all commercial fertilizers and soil amendments, auxiliary soil and plant substance distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]; provided, that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall 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 and soil amendments, auxiliary soil and plant substance sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less shall be exempt from the provisions of this section. Where a person sells commercial fertilizer or soil amendments, auxiliary soil and plant substance 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 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 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 so distributed in this state during such period. The statement is due on or before the fifteenth day 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

* **NOTE:** Section 19-20.1-06 was also amended by section 4 of Senate Bill No. 2238, chapter 268.

licensee, and the amount of fees due shall constitute a debt and become the basis of a judgment against the licensee.

SECTION 55. AMENDMENT. Section 19-20.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-08. Inspection, sampling, analysis. It shall be the duty of the state laboratories director, who may act through ~~his~~ the director's authorized agent, to sample, inspect, make analyses of, and test commercial fertilizers and soil amendments, auxiliary soil and plant substance distributed within this state at time and place and to such an extent as ~~he~~ the director may deem necessary to determine whether such commercial fertilizers or soil amendments are in compliance with the provisions of this chapter. The state laboratories director individually or through ~~his~~ the director's agent, 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 subject to the provisions of this chapter and the rules and regulations pertaining thereto. The methods of analysis and sampling shall be those adopted by the department from sources such as the A.O.A.C. journal.

The department, in determining for administrative purposes whether any commercial fertilizer or soil amendment, auxiliary soil and plant substance 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 plant substance 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 official. Upon request the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

* **SECTION 56. AMENDMENT.** Section 19-20.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-10. False or misleading statements. A commercial fertilizer or soil amendment, auxiliary soil and plant substance is misbranded 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 or soil amendment, auxiliary soil and plant substance are disseminated in any manner or by any means. It shall be unlawful to distribute a misbranded fertilizer or soil amendment, auxiliary soil and plant substance.

SECTION 57. AMENDMENT. Section 19-20.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* **NOTE:** Section 19-20.1-10 was also amended by section 5 of Senate Bill No. 2238, chapter 268.

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.
2. Results of analyses based on official samples of commercial fertilizers and soil amendments, auxiliary soil and plant substance distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

SECTION 58. AMENDMENT. Section 19-20.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-12. **Rules and regulations.** For the enforcement of this chapter, the state laboratories director is authorized to prescribe and enforce such rules, regulations, and tolerances relating to the labeling and distribution of commercial fertilizers and soil amendments as ~~he~~ the state laboratories director may find necessary to carry into effect the full intent and meaning of this chapter. When promulgating any rules or regulations under the authority of this section, the state laboratories director shall follow the procedures provided in chapter 28-32.

SECTION 59. AMENDMENT. Section 19-20.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-13. **Short weight.** If any commercial fertilizer or soil amendment, auxiliary soil and plant substance 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 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 60. AMENDMENT. Section 19-20.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-14. **Cancellation of registrations.** The department is authorized and empowered to cancel the registration of any brand of commercial fertilizer or soil amendment, auxiliary soil and plant substance and to cancel the license of any distributor or to refuse to register any brand of commercial fertilizer or soil amendment, auxiliary soil and plant substance or 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 registration or license shall be revoked or refused without opportunity for hearing given by the department.

SECTION 61. AMENDMENT. Section 19-20.1-15 of the North Dakota Century Code is hereby amended and reenacted to read 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 plant substance and an order to hold at a designated place when the department finds said commercial fertilizer or soil amendment, auxiliary soil and plant substance is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and said commercial fertilizer or soil amendment, auxiliary soil and plant substance is released in writing by the department or said violation has been otherwise legally disposed by written authority. The department shall release the commercial fertilizer or soil amendment, auxiliary soil and plant substance so withdrawn when the requirements of the provisions of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

SECTION 62. AMENDMENT. Section 19-20.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-16. Seizure, condemnation, and sale. Any lot of commercial fertilizer or soil amendment, auxiliary soil and plant substance not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to the district court in the county in which said commercial fertilizer or soil amendment, auxiliary soil and plant substance is located. In the event the court finds the said commercial fertilizer or soil amendment, auxiliary soil and plant substance to be in violation of this chapter and orders its condemnation, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil amendment, auxiliary soil and plant substance and the laws of the state; provided, that in no instance shall the disposition of said commercial fertilizer or soil amendment, auxiliary soil and plant substance be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or soil amendment, auxiliary soil and plant substance or for permission to process or relabel said commercial fertilizer or soil amendment, auxiliary soil and plant substance to bring it into compliance with this chapter.

SECTION 63. AMENDMENT. Section 19-20.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-17. Violations - Penalty.

1. If it shall appear from the examination of any commercial fertilizer or soil amendment, auxiliary soil and plant substance that any of the provisions of this chapter or the rules and regulations issued thereunder 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 sample was taken. Any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed 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 and regulations issued thereunder have been violated, the state laboratories director 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 and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said state laboratories director or his the state laboratories director's duly authorized agent in the performance of his their duty 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 fertilizers or soil amendments, auxiliary soil and plant substance, a certified copy of the official analysis signed by the state laboratories director shall be accepted as prima facie evidence of the composition.
3. Nothing in this chapter shall be construed as requiring the state laboratories director or his the director's representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when he the director believes that the public interests will be best served by a suitable notice of warning in writing.
4. 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.
5. 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 or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

SECTION 64. AMENDMENT. Subsection 5 of section 19-21-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The use by any person to ~~his~~ their own advantage, or revealing, other than to the department, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of section 19-21-06 concerning any method of process which, as a trade secret, is entitled to protection.

SECTION 65. AMENDMENT. Section 19-21-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-21-04. Hearing before report of criminal violation. Before any violation of this chapter is reported by the department to any state's attorney for institution of a criminal proceeding, the person against whom such proceedings is contemplated shall be given appropriate notice and an opportunity to present ~~his~~ their views, either orally or in writing, with regard to such contemplated proceeding.

SECTION 66. REPEAL. Section 19-17-06 of the North Dakota Century Code is hereby repealed.

Approved March 27, 1985

CHAPTER 259

SENATE BILL NO. 2195
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

FOOD, DRUG, AND COSMETIC ACT PENALTIES

AN ACT to amend and reenact subsection 1 of section 19-02.1-04, sections 19-02.1-06 and 19-02.1-07 of the North Dakota Century Code, relating to penalties, prosecutions, and minor violations of the Food, Drug, and Cosmetic Act; and providing a penalty.

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

* SECTION 1. AMENDMENT. Subsection 1 of section 19-02.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person who violates any of the provisions of subsections 1 through ~~14~~ 16 of section 19-02.1-02 shall be guilty of a class B misdemeanor.

** SECTION 2. AMENDMENT. Section 19-02.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-06. Prosecutions - State's attorney. It shall be the duty of each state's attorney to whom the department or board of pharmacy reports any violation of this chapter occurring in his county, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

SECTION 3. AMENDMENT. Section 19-02.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-07. Minor violations. Nothing in this chapter shall be construed as requiring the state laboratories director or the board of pharmacy to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the state laboratories director or the board of pharmacy believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Approved March 22, 1985

* NOTE: Section 19-02.1-04 was also amended by section 12 of House Bill No. 1590, chapter 258.

** NOTE: Section 19-02.1-06 was also amended by section 14 of House Bill No. 1590, chapter 258.

CHAPTER 260

SENATE BILL NO. 2239
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

PRESCRIPTION DRUG LABELS

AN ACT to amend and reenact subsection 2 of section 19-02.1-14.1 of the North Dakota Century Code, relating to the label of drugs.

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

SECTION 1. AMENDMENT. Subsection 2 of section 19-02.1-14.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Drugs or medicines dispensed pursuant to a prescription shall bear a label permanently affixed to the immediate container in which the drug or medicine is dispensed or delivered and which is received by the purchaser or patient. The label shall bear the brand name or the generic name and, strength, quantity, serial number, date of dispensing, patient name, and directions for use of the drug or medicine, except when the physician or other health care provider authorized by law to prescribe drugs or medicine has notified the pharmacist that the appearance of the name on the label would be alarming to or detrimental to the well-being of the purchaser of the prescription.

Approved March 22, 1985

CHAPTER 261

HOUSE BILL NO. 1188
(Committee on Social Services and Veterans Affairs)
(At the request of the Board of Pharmacy)

BOARD OF PHARMACY POWERS REGARDING DRUG IDENTIFICATION

AN ACT to amend and reenact subsections 7, 8, and 9 of section 19-02.1-14.1 of the North Dakota Century Code, relating to the identification of drugs.

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

SECTION 1. AMENDMENT. Subsections 7, 8, and 9 of section 19-02.1-14.1 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

7. All manufacturers and distributors of prescription drugs in solid dosage form shall provide to the department or board of pharmacy, upon request, a listing of all such prescription drugs identifying by code imprint the manufacturer and the specific type of drug. The listing shall at all times be kept current by all manufacturers and distributors subject to the provisions of this section.
8. The ~~department~~ board of pharmacy may grant exemptions from the requirements of this section upon application by any drug manufacturer or distributor which shows size, physical characteristics, or other unique characteristics of a drug that render the use of a code imprint on the drug impractical or impossible. Any exemption granted by the ~~department~~ board of pharmacy shall be included by the manufacturer or distributor in the listing required by this section. The listing shall describe the physical characteristics and type of drug to which the exemption relates.
9. All prescription drugs in solid dosage form that are possessed, distributed, sold, or offered for sale in violation of the provisions of this section shall be deemed misbranded and shall be seized by the department or board of pharmacy.

Approved March 14, 1985

CHAPTER 262

SENATE BILL NO. 2381
(Lips, Satrom)

CONTROLLED SUBSTANCES BOARD

AN ACT to create and enact a new section to chapter 19-03.1 and a new subsection to section 19-03.1-01 of the North Dakota Century Code, relating to the creation of a controlled substances board to carry out the provisions of the Uniform Controlled Substances Act, and the definition of "board"; to amend and reenact subsection 12 of section 19-03.1-01, sections 19-03.1-02, 19-03.1-04, 19-03.1-06, 19-03.1-08, subsection 6 of section 19-03.1-09, section 19-03.1-10, subsection 7 of section 19-03.1-11, sections 19-03.1-12, 19-03.1-14, 19-03.1-15, 19-03.1-16, 19-03.1-17, 19-03.1-18, 19-03.1-19, 19-03.1-20, subsection 2 of section 19-03.1-22, section 19-03.1-26, subsection 2 of section 19-03.1-33, section 19-03.1-35, subsections 2, 4, 5, and 8 of section 19-03.1-36, sections 19-03.1-38, 19-03.1-39, and 54-12-15 of the North Dakota Century Code, relating to the implementation of and authority to control the Uniform Controlled Substances Act, and the duties of the drug enforcement unit; to repeal section 19-03.1-40 of the North Dakota Century Code, relating to proceedings pending prior to enactment of the Uniform Controlled Substances Act; and to provide an appropriation.

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

SECTION 1. A new subsection to section 19-03.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Board" means the North Dakota controlled substances board.

SECTION 2. AMENDMENT. Subsection 12 of section 19-03.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. "Immediate precursor" means a substance which the ~~department~~ board has found to be and by rule designates as being the principal compound commonly used or produced

primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

SECTION 3. A new section to chapter 19-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Controlled substances board - Expense - Advise and assistance.

1. There is hereby established a North Dakota controlled substances board consisting of the attorney general or the attorney general's designee, the director of the state laboratories department or the director's designee, the chairman of the state board of medical examiners or the chairman's designee, a member appointed by the governor, and the executive secretary of the state board of pharmacy or the executive secretary's designee. The executive secretary of the state board of pharmacy, or the executive secretary's designee, shall be the chairman of the board.
2. In carrying out its duties under this chapter, the board shall consult with representatives of each of the following interest: board of dental examiners, board of registry in podiatry, board of veterinary medical examiners, board of nursing, the college of pharmacy, and the school of medicine.
3. To carry out its duties under this chapter, the board may enter into agreements or memorandums of understanding with the interests named in subsection 2. Additionally, the board may contract for and accept private contributions, gifts and grants-in-aid from the federal government, private industry, and other sources. The income received from these sources must be spent for the purpose designated in the gift, grant, or donation.
4. Members of the board may not receive any compensation for their service on the board, but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided for state employees.

SECTION 4. AMENDMENT. Section 19-03.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-02. Authority to control.

1. The North Dakota state laboratories department board shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, or 19-03.1-13 pursuant to the procedures of

chapter 28-32. In making a determination regarding a substance, the department board shall consider the following:

- a. The actual or relative potential for abuse;
 - b. The scientific evidence of its pharmacological effect, if known;
 - c. The state of current scientific knowledge regarding the substance;
 - d. The history and current pattern of abuse;
 - e. The scope, duration, and significance of abuse;
 - f. The risk to the public health;
 - g. The potential of the substance to produce psychic or physiological dependence liability; and
 - h. Whether the substance is an immediate precursor of a substance already controlled under this chapter.
2. After considering the factors enumerated in subsection 1, the department board shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.
 3. If the department board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.
 4. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the department board, the department board shall similarly control the substance under this chapter after the expiration of thirty days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling, or deleting a substance, unless within that thirty-day period, the department board objects to inclusion, rescheduling, or deletion. In that case, the department board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department board shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the department board, control under this chapter is stayed until the department board publishes its decision.

5. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in title 5.

SECTION 5. AMENDMENT. Section 19-03.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-04. Schedule I tests. The department board shall place a substance in schedule I if it finds that the substance:

1. Has high potential for abuse; and
2. Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

SECTION 6. AMENDMENT. Section 19-03.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-06. Schedule II tests. The department board shall place a substance in schedule II if it finds that:

1. The substance has high potential for abuse;
2. The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
3. The abuse of the substance may lead to severe psychic or physical dependence.

SECTION 7. AMENDMENT. Section 19-03.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-08. Schedule III tests. The department board shall place a substance in schedule III if it finds that:

1. The substance has a potential for abuse less than the substances listed in schedules I and II;
2. The substance has currently accepted medical use in treatment in the United States; and
3. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

*** SECTION 8. AMENDMENT.** Subsection 6 of section 19-03.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE:** Section 19-03.1-09 was also amended by section 17 of House Bill No. 1590, chapter 258, and amended by section 3 of Senate Bill No. 2498, chapter 265.

6. The state laboratories department board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 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 9. AMENDMENT. Section 19-03.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-10. Schedule IV tests. The department board shall place a substance in schedule IV if it finds that:

1. The substance has a low potential for abuse relative to substances in schedule III;
2. The substance has currently accepted medical use in treatment in the United States; and
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.

* SECTION 10. AMENDMENT. Subsection 7 of section 19-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. The department board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 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 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 depressant effect on the central nervous system.

SECTION 11. AMENDMENT. Section 19-03.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-12. Schedule V tests. The department board shall place a substance in schedule V if it finds that:

- * NOTE: Section 19-03.1-11 was also amended by section 4 of Senate Bill No. 2498, chapter 265.

1. The substance has low potential for abuse relative to the controlled substances listed in schedule IV;
2. The substance has currently accepted medical use in treatment in the United States; and
3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

SECTION 12. AMENDMENT. Section 19-03.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-14. **Republishing of schedules.** The department board shall revise and republish the schedules semiannually for two years from July 1, 1971, and thereafter annually.

SECTION 13. AMENDMENT. Section 19-03.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-15. **Rules.** The department board may adopt rules pursuant to chapter 28-32 and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

*** SECTION 14. AMENDMENT.** Section 19-03.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-16. Registration requirements.

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the department board in accordance with its rules.
2. Persons registered by the department board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this chapter.
3. The following persons need not register and may lawfully possess controlled substances under this chapter:
 - a. An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance

*** NOTE:** Section 19-03.1-16 was also amended by section 19 of House Bill No. 1590, chapter 258, and amended by section 6 of Senate Bill No. 2498, chapter 265.

- if he is acting in the usual course of his business or employment.
- b. A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.
 - c. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.
4. The department board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.
 5. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.
 6. The department board may inspect the establishment of a registrant or applicant for registration in accordance with the state department of health rule rules of the board.

SECTION 15. AMENDMENT. Section 19-03.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-17. Registration.

1. The department board shall register an applicant to manufacture or distribute controlled substances included in sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, and 19-03.1-13 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the department board shall consider the following factors:
 - a. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
 - b. Compliance with applicable state and local laws;
 - c. Any convictions of the applicant under any federal and state laws relating to any controlled substance;
 - d. Past experience in the manufacture or distribution of controlled substances, and the existence in the

- applicant's establishment of effective controls against diversion;
- e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
 - f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and
 - g. Any other factors relevant to and consistent with the public health and safety.
2. Registration under subsection 1 does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.
 3. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The department board need not require separate registration under this chapter for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this chapter in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon furnishing the state department of health evidence of that federal registration.
 4. Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

* SECTION 16. AMENDMENT. Section 19-03.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-18. Revocation and suspension of registration.

1. A registration under section 19-03.1-17 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department board upon a finding that the registrant:
 - a. Has furnished false or fraudulent material information in any application filed under this chapter;

* NOTE: Section 19-03.1-18 was also amended by section 20 of House Bill No. 1590, chapter 258.

- b. Has been convicted of a felony under any state or federal law relating to any controlled substance; or
 - c. Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.
2. The department board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.
 3. If the department board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.
 4. The department board shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

SECTION 17. AMENDMENT. Section 19-03.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-19. Order to show cause.

1. Before denying, suspending, or revoking a registration, or refusing a renewal of registration, the department board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the state laboratories department board at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 28-32 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

2. The department board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 19-03.1-18, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the department board or dissolved by a court of competent jurisdiction.

SECTION 18. AMENDMENT. Section 19-03.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-20. Records of registrants. Persons registered to manufacture, distribute, or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the department board issues.

SECTION 19. AMENDMENT. Subsection 2 of section 19-03.1-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In emergency situations, as defined by rule of the department board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 19-03.1-20. No prescription for a schedule II substance may be refilled.

SECTION 20. AMENDMENT. Section 19-03.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-26. Disposing of needles and paraphernalia - Penalty. Any registrant who shall use, administer, dispense or cause to be used, administered, or dispensed any drug or controlled substance in a manner requiring the use of any type of syringe, needle, eyedropper or other similar paraphernalia shall destroy and dispose of said syringe, needle, eyedropper, or other similar paraphernalia in a manner that will prevent its reuse by any person other than the registrant. The department board may adopt rules and regulations pursuant to chapter 28-32 setting out the specific manner in which the provisions of this section shall be carried out. Any registrant who violates the provisions of this section is guilty of a class A misdemeanor.

SECTION 21. AMENDMENT. Subsection 2 of section 19-03.1-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The department board may make administrative inspections of controlled premises in accordance with the following provisions:
- a. For purposes of this section only, "controlled premises" means:
 - (1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and
 - (2) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.
 - b. When authorized by an administrative inspection warrant issued pursuant to subsection 1 an officer or employee designated by the department board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.
 - c. When authorized by an administrative inspection warrant, an officer or employee designated by the department board may:
 - (1) Inspect and copy records required by this chapter to be kept;
 - (2) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subdivision e, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and
 - (3) Inventory any stock of any controlled substance therein and obtain samples thereof.
 - d. This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with section 28-32-09, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

- (1) If the owner, operator, or agent in charge of the controlled premises consents;
 - (2) In situations presenting imminent danger to health or safety;
 - (3) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
 - (4) In any other exceptional emergency circumstances where time or opportunity to apply for a warrant is lacking; or
 - (5) In all other situations in which a warrant is not constitutionally required.
- e. An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

* SECTION 22. AMENDMENT. Section 19-03.1-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-35. Cooperative arrangements and confidentiality.

1. The department board shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:
 - a. Arrange for exchange of information among governmental officials concerning the use and abuse of controlled substances.
 - b. Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels.
 - c. Cooperate with the bureau by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection 3.

* NOTE: Section 19-03.1-35 was also amended by section 25 of House Bill No. 1590, chapter 258.

- d. Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.
2. Results, information, and evidence received from the bureau relating to regulatory functions of this chapter, including results of inspections conducted by it may be relied and acted upon by the department board in the exercise of its regulatory functions under this chapter.
3. A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the department board nor may he be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

SECTION 23. AMENDMENT. Subsections 2, 4, 5, and 8 of section 19-03.1-36 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Property subject to forfeiture under this chapter, except conveyances, may be seized by the department board upon process issued by any district court having jurisdiction over the property. A conveyance subject to forfeiture under this chapter may be seized by a state, county, or city law enforcement agency upon process issued by any district court having jurisdiction over the conveyance. Seizure without process may be made if:
 - a. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant.
 - b. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceedings based upon this chapter.
 - c. The department board or a law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety.
 - d. The department board or a law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.
4. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in custody of the department board or a law enforcement agency subject only to the orders and decrees of the district court having

jurisdiction over the forfeiture proceedings as set out in subsection 2. When property is seized under this chapter, the ~~department~~ board or a law enforcement agency may:

- a. Place the property under seal.
 - b. Remove the property to a place designated by it.
 - c. Require the attorney general to take custody of the property and remove it to an appropriate location for disposition in accordance with law.
5. A district court shall order a seized conveyance to be forfeited upon conviction of the person arrested, upon a guilty plea, or upon the failure of a law enforcement agency to locate and arrest after one month the person who used the conveyance subject to forfeiture. When property is forfeited under this chapter the ~~department~~ board or a law enforcement agency may:
- a. Retain it for official use.
 - b. Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper 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 in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.
 - c. Require the attorney general to take custody of property and remove it for disposition in accordance with law.
 - d. Forward it to the bureau for disposition.
8. The failure, upon demand by the ~~department~~ board, or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

SECTION 24. AMENDMENT. Section 19-03.1-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-38. Judicial review. All final determinations, findings, and conclusions of the ~~department~~ board under this chapter are final

and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the district court. Findings of fact by the department board, if supported by substantial evidence are conclusive.

SECTION 25. AMENDMENT. Section 19-03.1-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-39. Education and research.

1. The department board shall carry out educational programs designed to prevent and deter misuse of controlled substances. In connection with these programs it may:
 - a. Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations.
 - b. Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances.
 - c. Consult with interested groups and organizations to aid them in solving administrative and organizational problems.
 - d. Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances.
 - e. Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them.
 - f. Assist in the educational and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.
2. The department board shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:
 - a. Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse.
 - b. Make studies and undertake programs of research to:

- (1) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter.
 - (2) Determine patterns of misuse and abuse of controlled substances and the social effects thereof.
 - (3) Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances.
- c. Enter contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.
3. The department board may enter into contracts for educational and research activities without performance bonds and without regard to statutory provisions affecting such contracts.
 4. The department board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.
 5. The department board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

SECTION 26. AMENDMENT. Section 54-12-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-15. Drug enforcement unit - Personnel - Duties. A law enforcement unit to be designated as the drug enforcement unit is created under the attorney general. The drug enforcement unit shall consist of a director and such other personnel as may be designated by the attorney general. It shall be the duty of the drug enforcement unit to enforce all of the provisions of chapter 19-03.1 and any other provision of law dealing with controlled substances. The ~~state laboratories department~~ board and other state and local agencies shall cooperate with the drug enforcement unit in the discharge of its responsibilities concerning traffic in controlled

substances and in suppressing the abuse of controlled substances. To this end the unit is authorized to:

1. Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances.
2. Coordinate and cooperate in training programs on controlled substance law enforcement at the local and state levels.
3. Establish a centralized information system which will accept, catalog, file, and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state, and local law enforcement purposes on request.
4. Cooperate in locating, eradicating, and destroying wild or illicit growth of plant species from which controlled substances may be extracted.

SECTION 27. REPEAL. Section 19-03.1-40 of the North Dakota Century Code is hereby repealed.

SECTION 28. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund of the state treasury, not otherwise appropriated, the sum of \$5,000, or so much thereof as may be necessary, to the North Dakota controlled substances board for the purpose of carrying out the provisions of chapter 19-03.1 of the North Dakota Century Code for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved March 30, 1985

CHAPTER 263

HOUSE BILL NO. 1406
(Nalewaja)

ALCOHOL-BLENDED GASOLINE NOTICE

AN ACT to create and enact a new section to chapter 19-10 of the North Dakota Century Code, to make unlawful the retail selling of alcohol-blended gasoline without proper notice.

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

SECTION 1. A new section to chapter 19-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Retail sale of alcohol-blended gasoline - Notice required. No dealer may sell at retail alcohol-blended gasoline unless the dispensing unit bears the word "contains" and the name of the alcohol blended with the gasoline if the alcohol-blended gasoline consists of one percent or more by volume of any alcohol.

Approved March 29, 1985

CHAPTER 264

HOUSE BILL NO. 1529
(Thompson)

COMMERCIAL FEED LABELING

AN ACT to amend and reenact subsection 3 of section 19-13.1-04 of the North Dakota Century Code, relating to labeling of commercial feed.

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

SECTION 1. AMENDMENT. Subsection 3 of section 19-13.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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, shall 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 shall 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)~~ sodium (Na), and minimum and maximum percentage of chloride (Cl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the department. When any items are guaranteed, they shall be 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.

Approved March 14, 1985

CHAPTER 265

SENATE BILL NO. 2498
(Matchie)UNIFORM CONTROLLED SUBSTANCES ACT
SCHEDULES

AN ACT to create and enact subsection 3 to section 19-03.1-13 of the North Dakota Century Code, relating to definitions of certain controlled substances; and to amend and reenact sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, and subsection 6 of section 19-03.1-16 of the North Dakota Century Code, relating to the Uniform Controlled Substances Act schedules.

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

SECTION 1. AMENDMENT. Section 19-03.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-05. Schedule I.

1. The controlled substances listed in this section are included in schedule I.
2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
 - a. Acetylmethadol.
 - b. Allylprodine.
 - c. Alphacetylmethadol.
 - d. Alphameprodine.
 - e. Alphamethadol.
 - f. Alpha-methylfentanyl (N-[1(alpha-menthyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

- g. Benzethidine.
- g- h. Betacetylmethadol.
- h- i. Betameprodine.
- i- j. Betamethadol.
- j- k. Betaprodine.
- k- l. Clonitazene.
- i- m. Dextromoramide.
- m- ~~Bextrophan-~~
- n. Diampromide.
- o. Diethylthiambutene.
- p. Difenoxin.
- q. Dimenoxadol.
- r. Dimepheptanol.
- s. Dimethylthiambutene.
- t. Dioxaphetyl butyrate.
- u. Dipipanone.
- v. ~~Ethymethythiambutene~~ Ethylmethylthiambutene.
- w. Etonitazene.
- x. ~~Etokeridene~~ Etokeridine.
- y. Furethidine.
- z. Hydroxypethidine.
- aa. Ketobemidone.
- bb. Levomoramide.
- cc. Levophenacylmorphan.
- dd. Morpheridine.
- ee. Noracymethadol.
- ff. Norlevorphanol.

- gg. Normethadone.
 - hh. Norpipanone.
 - ii. Phenadoxone.
 - jj. Phenampromide.
 - kk. Phenomorphan.
 - ll. Phenoperidine.
 - mm. Piritramide.
 - nn. Propheptazine.
 - oo. Properidine.
 - pp. Propiram.
 - qq. Racemoramide.
 - rr. Tilidine.
 - ss. Trimeperidine.
3. Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Acetorphine.
 - b. Acetyldihydrocodeine.
 - c. Benzylmorphine.
 - d. Codeine methylbromide.
 - e. ~~Codeine-n-oxide~~ Codeine-N-Oxide.
 - f. Cyprenorphine.
 - g. Desomorphine.
 - h. Dihydromorphine.
 - i. Drotebanol.
 - j. Etorphine (except hydrochloride salt).
 - k. Heroin.

- l. Hydromorphenol.
 - m. Methyl-desorphine.
 - n. Methyl-dihydromorphine.
 - o. Morphine methylbromide.
 - p. Morphine methylsulfonate.
 - q. ~~Morphine-n-oxide~~ Morphine-N-Oxide.
 - r. Myrophine.
 - s. Nicocodeine.
 - t. Nicomorphine.
 - u. Normorphine.
 - v. Pholcodine.
 - w. Thebacon.
4. Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. 4-bromo-2, 5-dimethoxyamphetamine. (Some trade or other names: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA.)
 - b. 2, 5-dimethoxyamphetamine. (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-methylenedioxyamphetamine.
 - e. 4-methyl-2, 5-dimethoxyamphetamine. (Some trade and other names: 4-methyl-2, 5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP".)
 - f. 3, 4-methylenedioxy amphetamine.
 - g. 3, 4, 5-trimethoxy amphetamine.

- h. Bufotenine. (Some trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine.)
- i. Diethyltryptamine. (Some trade and other names: N,N-Diethyltryptamine; DET.)
- j. Dimethyltryptamine. (Some trade and other names: DMT.)
- k. Ethyl amine analog of phencyclidine. (Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.)
- l. Hashish.
- m. Ibogaine. (Some trade and other names: 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido (1, 2, : 1, 2) azepino (5, 4-b) indole; ~~tabernanthe~~ Tabernanthe iboga.)
- n. Lysergic acid diethylamide.
- o. Marijuana.
- p. Mescaline.
- q. Parahexyl-7374 (Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzol[b, d]pyran; Synhexyl.)
- r. Peyote.
- r- s. N-ethyl-3-piperidyl benzilate.
- s- t. N-methyl-3-piperidyl benzilate.
- t- u. Psilocybin.
- u- v. Psilocyn.
- v- Pyrrolidine analog of phencyclidine. (Some trade or other names: 1-(1-phenylcyclohexyl) pyrrolidine; PCP; PHP.)
- w. Tetrahydrocannabinols. 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) cis or trans tetrahydrocannabinol, and their optical isomers.
- (2) cis or trans tetrahydrocannabinol, and their optical isomers 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. Thiophene Analog of Phencyclidine. (Some trade or other names: (1-(1-(2-thienyl) cyclohexyl) piperidine, 2-Thienyl Analog of Phencyclidine, TPCP, TCP.
5. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. mecloqualone Mecloqualone.
- b. Methaqualone.
6. 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. N-ethylamphetamine.

SECTION 2. AMENDMENT. Section 19-03.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-07. Schedule II.

1. The controlled substances listed in this section are included in schedule II.
2. Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by 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, naloxone and its salts, and excluding naltrexone and its 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, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions 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).
3. Any 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 these such isomers, esters, ethers, and salts is possible within the specific chemical designation dextrophan and levopropoxyphene excepted:
- a. Alphaprodine.
 - b. Anileridine.
 - c. Bezitramide.
 - d. Bulk dextropropoxyphene (nondosage forms).
 - e. Dihydrocodeine.
 - ~~e~~ f. Diphenoxylate.
 - ~~f~~ g. Fentanyl.
 - ~~g~~ h. Isomethadone.
 - ~~h~~ i. Levomethorphan.
 - ~~i~~ j. Levorphanol.
 - ~~j~~ k. Metazocine.
 - ~~k~~ l. Methadone.
 - ~~l~~ m. Methadone - intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
 - ~~m~~ n. Moramide - intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
 - ~~n~~ o. Pethidine (meperidine).
 - ~~o~~ p. Pethidine - intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
 - ~~p~~ q. Pethidine - intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate.
 - ~~q~~ r. Pethidine - intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

- r- s. Phenazocine.
 - s- t. Priminodine.
 - t- u. Racemethorphan.
 - u- v. Racemorphan.
 - w. Sufentanil.
4. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
 - b. Methamphetamine, including its salts, isomers, and salts of isomers.
 - c. Phenmetrazine and its salts.
 - d. Methylphenidate.
5. Depressants. 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 depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Amobarbital.
 - b. Methaqualone-
 - e- Pentobarbital.
 - d- c. Phencyclidine.
 - e- Phenyletidine immediate precursors-
 - (1) 1-phenyletylohexylamine-
 - (2) 1-piperidineetylohexanecarbonitrile (PEG)-
 - f- d. Secobarbital.
6. 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).

* SECTION 3. AMENDMENT. Section 19-03.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-09. Schedule III.

1. The controlled substances listed in this section are included in schedule III.
2. 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 (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II and any other drug of the quantitative composition shown in that schedule for those drugs or which is the same except that it contains a lesser quantity of controlled substances.
 - b. Benzphetamine.
 - c. Chlorphentermine.
 - d. Clortermine.
 - e. ~~Mazindol-~~
 - f. Phendimetrazine.
3. Depressants. 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 depressant effect on the central nervous system:
 - a. Any compound, mixture, or preparation containing:

* NOTE: Section 19-03.1-09 was also amended by section 17 of House Bill No. 1590, chapter 258, and amended by section 8 of Senate Bill No. 2381, chapter 262.

- (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 which 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.
 - d. Chlorhexadol.
 - e. Glutethimide.
 - f. Lysergic acid.
 - g. Lysergic acid amide.
 - h. Methyprylon.
 - i. Sulfondiethylmethane.
 - j. Sulfonethylmethane.
 - k. Sulfonmethane.
4. Nalorphine.
 5. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
 - a. Not more than 1.80 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

- b. Not more than 1.80 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - c. Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
 - d. Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - e. Not more than 1.80 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - f. Not more than 300 milligrams of ethylmorphine or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.
 - g. 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.
 - h. Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. The state laboratories department may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 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 4. AMENDMENT. Section 19-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-11. Schedule IV.

1. The controlled substances listed in this section are included in schedule IV.
2. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
 - a. Alprazolam.
 - b. Barbital.
 - ~~b-~~ c. Chloral betaine.
 - ~~c-~~ d. Chloral hydrate.
 - ~~d-~~ e. Chlordiazepoxide, but not including Librax (chlordiazepoxide hydrochloride and clindinium bromide) or Menrium (chlordiazepoxide and water soluble esterified estrogens).
 - ~~e-~~ f. Clonazepam.
 - ~~f-~~ g. Clorazepate.
 - ~~g-~~ h. Diazepam.
 - ~~h-~~ i. Ethchlorvynol.
 - ~~i-~~ j. Ethinamate.
 - ~~j-~~ k. Flurazepam.
 - l. Halazepam.
 - m. Lorazepam.
 - ~~k-~~ n. Mebutamate.
 - o. Meproamate.
 - ~~l-~~ p. Methohexital.
 - ~~m-~~ Meproamate-
 - ~~n-~~ q. Methylphenobarbital (mephobarbital).
 - ~~o-~~ r. Oxazepam.

* NOTE: Section 19-03.1-11 was also amended by section 10 of Senate Bill No. 2381, chapter 262.

- p- s. Paraldehyde.
- q- t. Petrichloral.
- r- u. Phenobarbital.
- v. Prazepam.
- w. Temazepam.
- x. Triazolam.
3. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substance substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.
4. 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 (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Diethylpropion.
- b. Mazindol.
- c. Phentermine.
- e- d. Pemoline (including organometallic complexes and chelates thereof).
- e. Pipradrol.
- f. SPA ((-) -1-dimethylamino-1, 2-diphenylethane).
5. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances pentazocine, including its salts-
- a- Dextropropoxyphene (Alpha- (+) - 4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane)-
- b- Pentazocine.
6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound,

mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below: Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

- a. Not more than 2 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
 - b. Dextropropoxyphene (alpha-(+)-4-dimethylamino-1.2-diphenyl-3-methyl-2-propionoxybutane).
7. The department may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 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 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 depressant effect on the central nervous system.

SECTION 5. Subsection 3 of section 19-03.1-13 of the North Dakota Century Code is hereby created and enacted to read 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 and their salts, as set forth below:
 - a. Buprenorphine.
 - b. Reserved.

*** SECTION 6. AMENDMENT.** Subsection 6 of section 19-03.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. The department may inspect the establishment of a registrant or applicant for registration in accordance with the state laboratories department ~~of health~~ rule.

Approved March 31, 1985

- * NOTE: Section 19-03.1-16 was also amended by section 19 of House Bill No. 1590, chapter 258, and amended by section 14 of Senate Bill No. 2381, chapter 262.

CHAPTER 266

SENATE BILL NO. 2210
(Committee on State and Federal Government)
(At the request of the State Laboratories Department)

ANTIFREEZE REGISTRATION

AN ACT to amend and reenact section 19-16.1-03 of the North Dakota Century Code, relating to registration of antifreeze; and to provide a penalty.

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

* SECTION 1. AMENDMENT. Section 19-16.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-03. Registration. Before any antifreeze may be distributed in this state, the manufacturer or person whose name appears on the label shall make application to the department on forms provided by the latter for registration for each antifreeze which he desires to distribute. All registrations expire on June thirtieth of each year. The application shall be accompanied by specimens or facsimiles of its labeling, an inspection fee of forty dollars for each product, and by a properly labeled sample of the antifreeze. The department shall inspect, test, or analyze the antifreeze and review the label. If the antifreeze and labeling is not adulterated or misbranded, the department shall issue a certificate of registration, authorizing the distribution of such antifreeze in this state for one year ending June thirtieth. If the antifreeze or label is not in conformity with the law, the department shall refuse to register the antifreeze and shall return the application to the applicant, stating the reasons therefor. The department shall remit inspection fees received by the department to the state treasurer for deposit in the state general fund. A penalty of fifty percent of the registration fee shall be imposed if the certificate of registration is not applied for on or before July first of each year, or within the same month such antifreeze is first manufactured or sold within this state.

Approved March 22, 1985

* NOTE: Section 19-16.1-03 was also amended by section 40 of House Bill No. 1590, chapter 258.

CHAPTER 267

HOUSE BILL NO. 1538
(Linderman)

ECONOMIC POISON CONTAINERS

AN ACT to amend and reenact subsection 2 of section 19-18-03 of the North Dakota Century Code, relating to economic poisons; and to declare an emergency.

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

* SECTION 1. AMENDMENT. Subsection 2 of section 19-18-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, or in a container repackaged by a facility or person with a federal environmental protection agency issued establishment number, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:
 - a. The name and address of the manufacturer, registrant, or person for whom manufactured;
 - b. The name, brand, or trademark under which said article is sold; and
 - c. The net weight or measure of the content subject, however, to such reasonable variations as the commissioner may permit.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 27, 1985

* NOTE: Section 19-18-03 was also amended by section 46 of House Bill No. 1590, chapter 258.

CHAPTER 268

SENATE BILL NO. 2238
(Committee on Agriculture)
(At the request of the State Laboratories Department)

SOIL FERTILIZERS OR ADDITIVES

AN ACT to create and enact two new subsections to section 19-20.1-02 of the North Dakota Century Code, relating to soil amendment and fertilizer definitions; to amend and reenact subsections 8 and 9 of section 19-20.1-02, and sections 19-20.1-03.1, 19-20.1-06, 19-20.1-10, and 19-20.1-18 of the North Dakota Century Code, relating to soil additives.

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

SECTION 1. Two new subsections to section 19-20.1-02 of the North Dakota Century Code are hereby created and enacted to read as follows:

"Inert" means any ingredient not active.

"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.

* SECTION 2. AMENDMENT. Subsections 8 and 9 of section 19-20.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "Licensee" means any person licensed by the department as a distributor of agricultural fertilizer, soil amendment, or auxiliary soil and plant substance.
9. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture fertilizer materials, soil amendments, or auxiliary soil and plant substances.

SECTION 3. AMENDMENT. Section 19-20.1-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-03.1. License required. No person shall sell at retail agricultural fertilizer, soil amendment or auxiliary soil and plant substance in this state without first obtaining a distributor's license from the department. A license shall be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license shall be submitted on a form prescribed by the department, and shall be accompanied by a fee of fifty dollars. All licenses shall expire on June thirtieth of each year. Licenses shall not be transferable, and each license shall be conspicuously posted at each location and shall accompany each mobile mechanical unit operating in the state.

** SECTION 4. AMENDMENT. Section 19-20.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-06. Inspection fees and tonnage reports. There shall be paid to the department for all commercial fertilizers and, soil amendments or auxiliary soil and plant substances distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]; provided, that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall 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 and, soil amendments or auxiliary soil and plant substances sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less shall be exempt from the provisions of this section. Where a person sells

* NOTE: Section 19-20.1-02 was also amended by section 52 of House Bill No. 1590, chapter 258.

** NOTE: Section 19-20.1-06 was also amended by section 54 of House Bill No. 1590, chapter 258.

commercial fertilizer or soil amendments or auxiliary soil and plant substances 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 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 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 so distributed in this state during such period. The statement is due on or before the fifteenth day 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 5. AMENDMENT. Section 19-20.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-10. False or misleading statements. A commercial fertilizer or soil amendment or auxiliary soil and plant substance is misbranded 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 or soil amendment or auxiliary soil and plant substance are disseminated in any manner or by any means. It shall be unlawful to distribute a misbranded fertilizer or soil amendment or auxiliary soil and plant substance.

SECTION 6. AMENDMENT. Section 19-20.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-18. Exchanges between manufacturers. Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendments or auxiliary soil and plant substances to each other by importers, manufacturers, or manipulators who mix fertilizer materials, soil amendments or auxiliary soil and plant substances for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil amendments or auxiliary soil and plant substances to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

Approved March 30, 1985

* NOTE: Section 19-20.1-10 was also amended by section 56 of House Bill No. 1590, chapter 258.

CHAPTER 269

HOUSE BILL NO. 1587
(Representatives Dalrymple, A. Olson)
(Senator Heinrich)

ANHYDROUS AMMONIA FACILITIES SAFETY STANDARDS

AN ACT to set safety standards for anhydrous ammonia facilities; and to provide a penalty.

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

SECTION 1. Anhydrous ammonia safety rules. The commissioner of agriculture shall adopt the 1981 American national standard safety requirements for the storage and handling of anhydrous ammonia, except as otherwise required by this Act, and other rules necessary to implement this chapter.

SECTION 2. License required - Existing anhydrous ammonia storage facilities. Any user or retail vendor of anhydrous ammonia owning one or more bulk storage facilities exceeding six thousand gallons [22712.47 liters] of storage capacity and constructed before July 1, 1985, shall apply for an operator's license to the commissioner of agriculture before September 30, 1985. However, any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this Act, and may receive a license under this Act regardless of noncompliance with the siting requirements. The commissioner may deny a license for failure to remit the proper fee with the application, or failure to comply with the rules adopted pursuant to this Act. The license is valid indefinitely, but may not be transferred.

SECTION 3. License required - Construction of anhydrous ammonia facilities. No permanent anhydrous ammonia storage facility may be constructed after June 30, 1985, without a license issued by the commissioner of agriculture and the board of county commissioners of the county in which the facility is to be constructed. An application for a license to site an anhydrous ammonia storage facility must be made to the commissioner of agriculture and to the board of county commissioners. The commissioner or the board may deny a license for failure to remit the proper fee to the commissioner of agriculture, for failure to comply with the siting requirements of this Act and rules adopted pursuant to this Act, or for failure to comply with local siting requirements.

SECTION 4. State license fee. The commissioner of agriculture shall charge a one-time fee for a license for each anhydrous ammonia storage facility site. The licensing fee is twenty-five dollars for a bulk storage facility exceeding six thousand gallons [22712.47 liters] of storage capacity and one hundred dollars for each retail storage site.

SECTION 5. State siting requirements - Facilities constructed after June 30, 1985. For facilities constructed after June 30, 1985:

1. Any permanent anhydrous ammonia storage facility with a container nominal capacity of less than one hundred thousand gallons [378541.2 liters] must be sited at least:
 - a. Fifty feet [15.24 meters] from the line of any adjoining property which may be built upon, or any highway or railroad mainline.
 - b. Four hundred fifty feet [137.16 meters] from any place of public assembly or residence, other than the company's business office.
 - c. Seven hundred fifty feet [213.36 meters] from any institutional residence.
2. Any permanent anhydrous ammonia storage facility with container nominal capacity of one hundred thousand gallons [378541.2 liters] or more must be located at least:
 - a. Fifty feet [15.24 meters] from the property line of adjoining property, which may be built upon, or any highway or railroad mainline.
 - b. Six hundred feet [182.88 meters] from any place of public assembly or residence, other than the company's business office.
 - c. One thousand feet [300.48 meters] from any institution residence.
3. Upon relocation of any permanent storage container, the container must be hydrostatically pressure tested.
4. All valves and other appurtenances to any anhydrous ammonia storage facility must be protected against physical damage. All shutoff valves must be kept closed and locked when not in use.

SECTION 6. Transfer hose requirements.

1. Any liquid transfer hose that is not drained of liquid upon completion of transfer operations must be equipped with an approved shutoff valve at the discharge end.

2. To prevent excessive hydrostatic pressure in hoses, differential pressure pass valves may be added, not to exceed fifty pounds per square inch of pressure, hydrostatic relief valves may be installed between each pair of valves in which liquid may be trapped, or a hose may be used to discharge liquid at a safe location. Any start-to-discharge pressure of relief valve must not be designed to handle less than three hundred fifty pounds per square inch nor more than four hundred pounds per square inch.
3. Pressure relief valves must be replaced every five years.

SECTION 7. 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 Act exist. The safety engineer of the North Dakota workmen's compensation bureau shall inform the commissioner of agriculture of any violations of this Act 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 8. Promotion of safety - Use of excess fees. Any excess fees collected under this Act must be used by the commissioner of agriculture to promote safety in anhydrous ammonia use and storage.

SECTION 9. Enforcement. The commissioner of agriculture may seek an injunction in the district court of the county where any alleged violation is occurring, or may issue a cease and desist order to any person allegedly violating this Act.

SECTION 10. Penalty. Any person violating this Act is guilty of a class A misdemeanor.

Approved April 11, 1985

GAME AND FISH

CHAPTER 270

HOUSE BILL NO. 1304
(Representatives Timm, Hill)
(Senator Kelsh)

FISHING GUIDE OR OUTFITTER

AN ACT to amend and reenact subsection 13 of section 20.1-01-02 of the North Dakota Century Code, relating to the definition of guides or outfitters under the game and fish laws.

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

SECTION 1. AMENDMENT. Subsection 13 of section 20.1-01-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. "Guide" or "outfitter" means any resident who holds himself out to the public as a guide or outfitter, and who provides, for compensation ~~in excess of five hundred dollars a year~~, transportation, equipment, arrangement of lodging, or his 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 shall not be entitled to act as guides or outfitters in this state.

Approved March 14, 1985

CHAPTER 271

HOUSE BILL NO. 1339
(O'Connell, R. Solberg, L. Hanson)

SNARING GAME ANIMALS OR COYOTES

AN ACT to create and enact a new section to chapter 20.1-07 of the North Dakota Century Code, relating to the use of snares in taking coyotes; and to amend and reenact section 20.1-01-05 of the North Dakota Century Code, relating to the use of snares for taking game animals.

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

* SECTION 1. AMENDMENT. Section 20.1-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-05. Unauthorized methods of taking game birds and game animals. Except as otherwise provided in this title, no person, for the purpose of catching, taking, killing, or raising any game birds or game animals shall:

1. Set, lay, or prepare any trap, snare, artificial light, net, birdlime, swivel gun, or any other device, except that the use of snares for taking coyotes is allowed under section 2 of this Act;
2. Drag, in any manner, any wire, rope, or other contrivance;
3. Use or cause to be used, except for transportation, any floating device or apparatus operated by electricity, steam, or gasoline, or any other floating vessel;
4. Use a firearm with any kind or type of silencer on it; or
5. Carry any firearm while in or on a motor vehicle with a cartridge in the chamber.

SECTION 2. A new section to chapter 20.1-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

* NOTE: Section 20.1-01-05 was also amended by section 2 of House Bill No. 1069, chapter 683.

Use of snares for taking coyotes - Restrictions - Identification - Snare standards.

1. The governor shall establish by proclamation an upland snaring season for the taking of coyotes.
2. No person may set or lay any snare for the purpose of taking coyotes on land belonging to another private person without receiving written permission from that person.
3. A person using a snare for the purpose of taking coyotes shall permanently affix with a metal or plastic tag that person's name, address, and telephone number to each snare being used.
4. The commissioner 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.

Approved March 27, 1985

CHAPTER 272

HOUSE BILL NO. 1070
 (Legislative Council)
 (Interim Judiciary "B" Committee)

NONCRIMINAL GAME AND FISH OFFENSES

AN ACT to create and enact three new sections to chapter 20.1-01 and a new subsection to section 20.1-02-05 of the North Dakota Century Code, relating to noncriminal game and fish violations; to amend and reenact sections 20.1-01-09, 20.1-01-10, 20.1-01-25, 20.1-01-26, 20.1-03-01.2, 20.1-03-16, 20.1-03-23, 20.1-03-27, 20.1-04-09, 20.1-04-10, 20.1-04-12, 20.1-04-14, 20.1-05-06, 20.1-06-07, 20.1-07-05, 20.1-08-01, 20.1-10-01, 20.1-13-02, subsection 13 of section 20.1-13-03, sections 20.1-13-03.1, 20.1-13-03.2, 20.1-13-04, subsection 7 of section 20.1-13-05, section 20.1-13-07, subsection 6 of section 20.1-13-10, sections 20.1-13-17 and 27-07.1-17 of the North Dakota Century Code, relating to noncriminal game and fish violations and the suspension of hunting, trapping, or fishing privileges; and to provide penalties.

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

SECTION 1. AMENDMENT. Section 20.1-01-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-09. Types of guns lawfully usable in taking raccoon with flashlight - Penalty. In the killing, shooting, ~~pursuit~~ pursuing, taking or in attempting to take raccoon with the use of a flashlight of not over two cells in the aggregate of four volts, it is illegal to use a rifle or handgun capable of firing a shell larger than a twenty-two caliber [5.59 millimeter] long rifle shell, or a shotgun larger than four-ten gauge [10.41 millimeters]. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 2. AMENDMENT. Section 20.1-01-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-10. Hours for hunting game birds and protected animals - Penalty. No person during the time elapsing between actual sunset of one day and one-half hour before sunrise of the next day, shall

hunt, pursue, catch, shoot at, or in any manner molest any game bird or protected animal in this state. This section ~~shall~~ does not apply to the trapping of fur-bearing animals by the holder of a lawfully issued trapping license, nor to the taking of raccoon as permitted by section 20.1-01-08. The hours and manner of hunting upland game birds and protected animals may be restricted further by gubernatorial proclamation issued pursuant to chapter 20.1-08. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 3. AMENDMENT. Section 20.1-01-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-25. Deposit of refuse unlawful - Penalty. The deposit of litter, refuse, rubbish, bottles, cans, or other waste materials, on or in the vicinity of any game refuge, lake, river, public park, or recreation area is prohibited. Police officers, sheriffs, deputies, and game and fish department personnel shall enforce this section. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 4. AMENDMENT. Section 20.1-01-26 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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. Upon Except as otherwise provided in this section, upon expiration of the suspension, the commissioner shall return the defendant's person's license or permit if it is still valid. No person shall 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.

SECTION 5. A new section to chapter 20.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certain game and fish violations noncriminal - Procedures. Any person who has been cited for a noncriminal offense under this title 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 8 of this Act. Within ten days after forfeiture of bond or payment of the statutory fee, the judge shall certify to the commissioner admission of the violation.

This section does not allow a halting officer to receive the statutory fee or bond.

SECTION 6. A new section to chapter 20.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Hearing procedures.

1. If a person cited for a violation that is designated as a noncriminal offense in this title does not choose to follow one of the procedures set forth in section 5 of this Act, that person may request a hearing on the issue of the commission of the violation charged. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance.
2. At the time of a request for a hearing on the issue of commission of the violation, the person charged shall deposit with the court an appearance bond equal to the statutory fee for the violation charged.

3. The state must prove the commission of a charged violation at the hearing under this section by a preponderance of the evidence. If, after a hearing, the court finds that the person had committed a noncriminal violation of this title or related proclamations or rules, the court shall notify the department within ten days of the date of hearing.

SECTION 7. A new section to chapter 20.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Amount of statutory fees. The fees required for a noncriminal disposition pursuant to section 5 or 6 of this Act are as follows:

1. For a class 1 noncriminal offense, a fee of fifty dollars.
2. For a class 2 noncriminal offense, a fee of twenty-five dollars.

SECTION 8. A new subsection to section 20.1-02-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Establish noncriminal penalties for any rules adopted by the commissioner. The maximum noncriminal penalty that may be set by the commissioner 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.

SECTION 9. AMENDMENT. Section 20.1-03-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-01.2. Instruction required before issuance of hunting license - Age limits - Penalty. No person born after December 31, 1961, except as provided in section 20.1-03-01.3, shall be issued any hunting license in this state unless he submits or exhibits the certificate of completion earned by him for successful completion of the course of instruction required by sections 20.1-03-01.1 through 20.1-03-01.3. A certificate of completion issued by any other state or province of Canada shall be is valid for all purposes. Any person who violates this section is guilty of a class 2 noncriminal offense.

SECTION 10. AMENDMENT. Section 20.1-03-16 of the North Dakota Century Code is hereby amended and reenacted to read 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 with a green or unmounted specimen, and the species of each such specimen. The licensee, upon request, shall exhibit such the record and all unmounted specimens in his possession to the commissioner, the deputy commissioner, or any bonded game warden. Anyone violating this section shall be guilty of an infraction. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 11. AMENDMENT. Section 20.1-03-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-23. Records to be kept by licensed dealers in green furs - Report to commissioner - 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 furs made by him that person. Such The record shall 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. Such Any additional information as the commissioner may require.

The information contained in such the record shall must be furnished to the commissioner on forms prepared by him the commissioner and under such rules and regulations as he the commissioner may adopt. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 12. AMENDMENT. Section 20.1-03-27 of the North Dakota Century Code is hereby amended and reenacted to read 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 such the license on his person when hunting, trapping, or fishing. Upon the request or demand of the commissioner, the deputy commissioner, any game warden, or any police officer, he that person shall show such the license immediately to the officer making the request or demand. Any person violating this section shall be guilty of an infraction who violates this section is guilty of a class 2 noncriminal offense.

SECTION 13. AMENDMENT. Section 20.1-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-04-09. Guns lawfully usable in pursuing or taking game birds - Penalty. No firearm, except a shotgun not larger in bore than ten gauge [19.69 square millimeters], fired from the shoulder, shall be used to hunt or pursue game birds. No person shall use a rifle, pistol, or ball cartridge to hunt or pursue game birds, or to raise or drive game birds from their resting or feeding places, or from any waters of this state. Any person who violates this section is guilty of a class 2 noncriminal offense.

SECTION 14. AMENDMENT. Section 20.1-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-04-10. Shell holding capacity of shotguns used in taking game birds restricted - Plugs authorized - Penalty. Any automatic or repeating shotgun authorized for the taking of game birds shall not be capable of holding more than three shells. A one-piece metal or wooden plug may be used to reduce the shell-holding capacity if such the plug is incapable of being removed through the loading end of the shotgun. Any person who violates this section is guilty of a class 2 noncriminal offense.

SECTION 15. AMENDMENT. Section 20.1-04-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-04-12. When gun dogs not to be trained or permitted to run loose - Exceptions - Penalty. No person, classified as a professional trainer, between April first and July fourteenth of each year, both dates inclusive, shall train or run any gun dog or allow any such dog to run loose. For purposes of this section, a professional trainer is any person who trains any breed of gun dog for remuneration which is the basis for his livelihood. This section shall does not prohibit the running of gun dog field trials, nor shall does this section prohibit the training of an individual's personal gun dog during that period provided that (1) landowner permission is secured by the trainer, (2) the trainer is present, (3) no native game birds are killed or captured, and (4) the training is not on a designated game management area or designated waterfowl production area. Any person who violates this section is guilty of a class 2 noncriminal offense.

SECTION 16. AMENDMENT. Section 20.1-04-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-04-14. Use of propane exploders - Penalty. Any propane exploder or similar noisemaking device designed to ward off blackbirds which is located within one hundred sixty rods [804.67 meters] of an inhabited dwelling shall only be used during the period between sunrise and sunset. Any person who violates any provision of this section is guilty of an infraction a class 2 noncriminal offense.

SECTION 17. AMENDMENT. Section 20.1-05-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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, and both to be worn conspicuously on the person. This section ~~shall~~ does not apply to any person hunting big game with bow and arrow during special bow hunting seasons. Any person violating who violates this section shall be is guilty of an infraction a class 2 noncriminal offense.

SECTION 18. AMENDMENT. Section 20.1-06-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-06-07. Fishhouses - License - Removal - Penalty.

1. No person, except as provided in section 20.1-06-05, shall 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 be issued by the commissioner, 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 shall be are subject to the rules the commissioner may adopt governing the construction, maintenance, and use of such units. The outside of each licensed unit shall 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 be removed from the ice by that date established by the governor's proclamation. Failure to remove a unit ~~shall be is~~ deemed an abandonment and the commissioner ~~is authorized to may~~ remove or destroy abandoned units.

SECTION 19. AMENDMENT. Section 20.1-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-07-05. Manner of taking protected fur-bearing animals restricted - Destruction of property of others unlawful - Penalty. It ~~shall be 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 fur-bearer. The governor, at the advice of the commissioner, 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 20. AMENDMENT. Section 20.1-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-08-01. Orders and proclamations have force of law - Penalty. Any order or proclamation issued by the governor pursuant to this chapter ~~shall have~~ has the force of law. Any person violating who violates a provision of such order or proclamation for which a noncriminal penalty is not provided for in the order of proclamation is guilty of a class B misdemeanor. The maximum noncriminal penalty that may be set in an order or proclamation is a fine of two hundred fifty dollars.

SECTION 21. AMENDMENT. Section 20.1-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-10-01. Property unlawfully taken, transported, or used to be confiscated by certain game and fish officials - Procedure. The commissioner, deputy commissioner, 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 ~~se~~ seized shall 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. ~~in event~~ If the alleged offender desires an attorney, a reasonable time shall be given to secure counsel. If it is not feasible to bring the alleged offender immediately before the court, the property shall 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 contain the provisions of this section to advise the alleged offender of the law.

SECTION 22. AMENDMENT. Section 20.1-13-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-02. Operation of unnumbered and unlicensed motorboats prohibited - Penalty. Every motorboat propelled by a motor on the waters of this state, shall be numbered and licensed as prescribed in this chapter. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and licensed in accordance with this chapter, with applicable federal law, or with a federally approved numbering system of another state, and unless:

1. The certificate of number awarded to such motorboat is in full force and effect.
2. The identifying number set forth in the certificate of number is displayed on each side of the bow of such motorboat.

Any person who violates ~~any provision of~~ this section is guilty of ~~an infraction~~ a class 2 noncriminal offense.

SECTION 23. AMENDMENT. Subsection 13 of section 20.1-13-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. Any person who violates ~~any provision of~~ this section is guilty of ~~an infraction~~ a class 2 noncriminal offense.

SECTION 24. AMENDMENT. Section 20.1-13-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-03.1. Manufacture and sale of outboard motors. No outboard motor manufactured after January 1, 1980, shall be sold or offered for commercial sale by a dealer in this state unless the motor ~~shall~~ have ~~has~~ permanently engraved thereon by the manufacturer an identifying serial number. The serial mark shall be of a permanent nature so as to prevent or discourage the removal, defacing, alteration, or destruction thereof. Any person ~~violating who~~ violates this section ~~shall~~ is guilty of ~~an infraction~~ a class 2 noncriminal offense.

SECTION 25. AMENDMENT. Section 20.1-13-03.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-03.2. Outboard motor - Serial number removed - Penalty. No person may possess, repair, or sell an outboard motor, acquired after January 1, 1980, from which the serial number has been removed. Any person ~~violating who~~ violates this section ~~shall~~ is guilty of ~~an infraction~~ a class 2 noncriminal offense.

SECTION 26. AMENDMENT. Section 20.1-13-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-04. Rules and regulations - Licensing watercraft for hire - Annual inspection - Penalty. The commissioner, to promote the public safety, shall adopt rules and regulations 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 craft. The commissioner shall provide for annual inspection of all watercraft used for hire to determine if rules and regulations governing such watercraft have been complied with, and may issue licenses to operate such watercraft. It shall be the commissioner's duty to The commissioner shall issue, along with each license, some evidence that the craft has been inspected and conforms to the standards governing such craft. No person shall operate watercraft used for hire or furnished with cottages let for hire without a current year's license. Any person who violates any provision of this section is guilty of an infraction a class 2 noncriminal offense.

SECTION 27. AMENDMENT. Subsection 7 of section 20.1-13-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. Any person who violates any provision of this section is guilty of an infraction a class 2 noncriminal offense.

SECTION 28. AMENDMENT. Section 20.1-13-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-07. Prohibited operation - Penalty.

1. No person ~~shall~~ may operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.
2. No person ~~shall~~ may operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.
3. No person under twelve years of age ~~shall~~ may operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a person eighteen years of age or older. Any person who violates this subsection is guilty of a class 2 noncriminal offense.
4. No person of twelve through fifteen years of age ~~shall~~ may operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a person eighteen years of age or older or the operator has taken

and passed a boating course approved by the department. Any person who violates this subsection is guilty of a class 2 noncriminal offense.

5. No person may cause or knowingly permit a minor under sixteen years of age to operate a motorboat propelled by over a ten horsepower motor unless the minor is otherwise authorized to do so by this section.

SECTION 29. AMENDMENT. Subsection 6 of section 20.1-13-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Any person who violates ~~any provision of~~ this section is guilty of ~~an infraction~~ a class 2 noncriminal offense.

SECTION 30. AMENDMENT. Section 20.1-13-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-13-17. Conformity with applicable federal boat and associated equipment safety standards - Penalty. No boat or associated equipment manufactured after July 1, 1973, not excluding any boat or associated equipment manufactured after July 1, 1973, whose owner is this state or a political subdivision thereof, shall be used on the waters of this state unless the boat and associated equipment conform with applicable federal boat and associated equipment safety standards as provided in the Federal Boat Safety Act of 1971, [Pub. L. 92-75; 85 Stat. 213; 46 U.S.C. 1451 et seq.], and acts amendatory thereto. Any person who violates this section is guilty of a class 2 noncriminal offense.

*** SECTION 31. AMENDMENT.** Section 27-07.1-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-17. Jurisdiction of county courts. A county court of any county of this state shall have jurisdiction in the following types of cases:

1. Civil cases with not more than ten thousand dollars in controversy. The jurisdiction of the county court extends to the following actions:
 - a. A garnishment action when the sum for which judgment is demanded in such action does not exceed ten thousand dollars.
 - b. An attachment action when the amount of damages claimed does not exceed ten thousand dollars.
 - c. An action for claim and delivery of property when the value of the property together with the sum, if any,

*** NOTE:** Section 27-07.1-17 was also amended by section 1 of Senate Bill No. 2118, chapter 338.

demanding as damages does not exceed ten thousand dollars.

- d. An action for eviction from real property irrespective of value when the amount demanded therein for rents and profits or damages does not exceed ten thousand dollars.
2. Criminal misdemeanor, infraction, and noncriminal traffic and game and fish cases.
3. Small claims cases.
4. Probate, guardianship, and other testamentary cases pursuant to title 30.1.
5. Trusts pursuant to title 30.1 and title 59.
6. Preliminary hearings and arraignments in felony criminal cases.
7. Commitment proceedings pursuant to chapter 25-03.1.
8. Any other cases, except proceedings conducted pursuant to chapter 27-20, as assigned by the presiding district judge of the judicial district in which the county is located; provided, however, that any party is entitled to have any matter assigned pursuant to this subsection heard by a district judge if a written request therefor is filed with the presiding district judge within three days after receiving notice of the assignment, and, provided further, that the trial of a criminal matter may not be assigned to a county judge who presided at the preliminary hearing except where a preliminary hearing has been waived.

Approved April 4, 1985

CHAPTER 273

HOUSE BILL NO. 1623
(Lloyd, Stofferahn)

SERVICEMEN'S DEER HUNTING LICENSES

AN ACT to amend and reenact subsection 13 of section 20.1-02-05 of the North Dakota Century Code, relating to the issuance of resident deer hunting licenses for members of the United States armed forces.

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

SECTION 1. AMENDMENT. Subsection 13 of section 20.1-02-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 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 be issued under this subsection unless an affidavit of a bona fide resident, setting forth the actual conditions, accompanies the application. This subsection shall not apply to lottery permits, except that the commissioner 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.

Approved March 22, 1985

CHAPTER 274

HOUSE BILL NO. 1079
(Legislative Council)
(Interim Natural Resources Committee)

WILDLIFE AREA ACQUISITION — GARRISON DIVERSION MITIGATION

AN ACT to amend and reenact sections 20.1-02-18, 20.1-02-18.1, and 20.1-02-18.2 of the North Dakota Century Code, relating to the acquisition of migratory bird refuges and waterfowl production areas by the federal government; and to repeal section 20.1-02-17.2, relating to the requirement that lands acquired by the game and fish department qualify as Garrison Diversion Project mitigated acres.

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

SECTION 1. AMENDMENT. Section 20.1-02-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-18. State's conditional consent to United States' acquisition of areas for migratory bird reservations - State retains jurisdiction. North Dakota consents, subject to the approval of the governor for each proposed acquisition, along with the conditions of sections 20.1-02-18.1 and 20.1-02-18.2, to the United States acquiring, by purchase, gift, devise, or lease, land or water in this state as the United States may deem necessary to establish migratory bird reservations in accordance with the federal Migratory Bird Conservation Act [Pub. L. 70-770; 45 Stat. 1222; 16 U.S.C. 715 et seq.]. North Dakota reserves such full and complete jurisdiction and authority over all such areas of land or water so acquired by the United States as is not incompatible with the administration, maintenance, protection, and control of such areas by the United States under the terms of said Act of Congress.

SECTION 2. AMENDMENT. Section 20.1-02-18.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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, 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 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. ~~An affirmative recommendation by the board must be obtained prior to final approval of all such proposed acquisitions, whether by transfer of title, lease, easement, or servitude.~~

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 shall 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 shall set forth the substance of the proposed action, and shall include a legal description of the proposed acquisitions. The board of county commissioners shall make its recommendations within sixty days after receipt of an acquisition proposal.

A detailed impact analysis from the federal agency involved shall be included with the acquisition proposal for board of county commissioner consideration in making recommendations. Such analysis shall include, but shall not be limited to, 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 shall 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 shall 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 shall 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 shall 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 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 3. AMENDMENT. Section 20.1-02-18.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-18.2. Negotiation of leases, easements, and servitudes for wildlife production purposes. A landowner may negotiate the terms of a lease, easement, or servitude for land, wetland, or water areas sought to

* NOTE: Section 20.1-02-18.2 was also amended by section 1 of House Bill No. 1418, chapter 275.

be acquired by the United States department of the interior, its bureaus or agencies, with moneys from the migratory bird conservation fund [16 U.S.C. 718d] for use as waterfowl production areas, wildlife refuges, or for other wildlife purposes. A landowner may:

1. Negotiate the time period of the lease, easement, or servitude being sought.
2. Restrict a lease, easement, or servitude by legal description to the land, wetland, or water areas being sought, and may drain any after-expanded wetland or water area in excess of the legal description in the lease, easement, or servitude.

Failure by the department of the interior, its bureaus or agencies, to agree to and comply with the above provisions shall nullify North Dakota's consent to the federal Act under section 20-1-02-18-

SECTION 4. REPEAL. Section 20.1-02-17.2 of the 1983 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 14, 1985

CHAPTER 275

HOUSE BILL NO. 1418
(G. Berg, Mertens, O. Hanson)

FEDERAL WATERFOWL PRODUCTION AREA EASEMENTS

AN ACT to amend and reenact sections 20.1-02-18.2 and 47-05-02.1 of the North Dakota Century Code, relating to the duration of federal waterfowl production area easements.

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

* SECTION 1. AMENDMENT. Section 20.1-02-18.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-18.2. Negotiation of leases, easements, and servitudes for wildlife production purposes. A landowner may negotiate the terms of a lease, easement, or servitude for land, wetland, or water areas sought to be acquired by the United States department of the interior, its bureaus or agencies, with moneys from the migratory bird conservation fund [16 U.S.C. 718d] for use as waterfowl production areas, wildlife refuges, or for other wildlife purposes. A landowner may:

1. Negotiate the time period of the lease, easement, or servitude being sought; however, the duration of an easement for a waterfowl production area acquired by the federal government, and consented to by the governor or appropriate state agency after July 1, 1985, may not exceed fifty years.
2. Restrict a lease, easement, or servitude by legal description to the land, wetland, or water areas being sought, and may drain any after-expanded wetland or water area in excess of the legal description in the lease, easement, or servitude.

Failure by the department of the interior, its bureaus or agencies, to agree to and comply with the above provisions shall nullify North Dakota's consent to the federal Act under section 20.1-02-18.

* NOTE: Section 20.1-02-18.2 was also amended by section 3 of House Bill No. 1079, chapter 274.

SECTION 2. AMENDMENT. Section 47-05-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-05-02.1. Regulations governing Requirements of easements, servitudes, or nonappurtenant restrictions on the use of real property. Real property easements, servitudes, or any nonappurtenant restrictions on the use of real property, which become binding after July 1, 1977, shall be subject to the regulations contained in requirements of this section. ~~These regulations shall be requirements~~ are deemed a part of any agreement for such interests in real property whether or not printed in a document of agreement.

1. The area of land covered by the easement, servitude, or nonappurtenant restriction on the use of real property shall be properly described, and shall set out the area of land covered by the interest in real property.
2. The duration of the easement, servitude, or nonappurtenant restriction on the use of real property shall be specifically set out, and in no case shall 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.
3. No increase in the area of real property subject to the easement, servitude, or nonappurtenant restriction shall be made except by negotiation between the owner of the easement, servitude, or nonappurtenant restriction and the owner of the servient tenement.

Approved March 27, 1985

CHAPTER 276

SENATE BILL NO. 2338
(Senator D. Meyer)
(Representative Murphy)

LANDOWNER ELK HUNTING LICENSE

AN ACT to create and enact a new subsection to section 20.1-03-11 and a new section to chapter 20.1-08 of the North Dakota Century Code, relating to licenses issued to landowners to hunt elk and the governor's proclamation on the hunting of elk; and to provide an expiration date.

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

SECTION 1. A new subsection to section 20.1-03-11 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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 shall 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 section. However, the governor shall give primary consideration to allowing preferential licenses under this section 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 section is not eligible to apply for a license to hunt elk in future years. License to hunt elk will not be issued under this section 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. A person who has applied for a preferential license under this section may not, during the elk hunting season in the year the license is applied for, post as not being open for hunting land owned or leased by the person in the district or unit in which the land described in the affidavit is located.

SECTION 2. A new section to chapter 20.1-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Governor's proclamation concerning the hunting of elk - License recipients not eligible to apply again. The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor shall prescribe. Licenses to hunt elk must be issued by lottery, except as provided under section 1 of this Act, with only residents eligible to apply. A person who has received a license to hunt elk is not eligible to apply for another such license.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1987, and after that date is ineffective.

Approved April 15, 1985

CHAPTER 277

HOUSE BILL NO. 1512
(Lipsiea)

BIGHORN SHEEP LICENSE AUCTION

AN ACT to amend and reenact subsections 3 and 4 of section 20.1-03-12 and section 20.1-08-04.1 of the North Dakota Century Code, relating to fees for hunting and fishing licenses and permits and the governor's proclamation concerning the hunting of bighorn sheep.

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

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 20.1-03-12 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. For a resident big game hunting license, eighteen dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
4. For a nonresident big game hunting license, one hundred dollars, and for a nonresident bow license, one hundred dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.

SECTION 2. AMENDMENT. Section 20.1-08-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-08-04.1. Governor's proclamation concerning the hunting of bighorn sheep - License recipients not eligible to apply again. The governor may by proclamation provide for a season to hunt bighorn sheep in such manner, number, places, and times as he shall prescribe. Licenses to hunt bighorn sheep shall be issued by lottery with only residents eligible to apply; however, the governor may by proclamation auction to the highest bidder, whether resident or nonresident, a license to hunt bighorn sheep in such manner, number, places, and times as the governor prescribes. Each person who has received a license to hunt bighorn sheep shall not be eligible to apply for another such license.

Approved March 22, 1985

CHAPTER 278

HOUSE BILL NO. 1532
(Rydell, Martinson)

ELK, MOOSE, BIGHORN SHEEP LICENSE APPLICATION FEES

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to an application fee for licenses to hunt elk, moose, and bighorn sheep; and to amend and reenact section 20.1-02-17 of the North Dakota Century Code, relating to the use of elk, moose, and bighorn sheep application fees by the game and fish department.

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

SECTION 1. AMENDMENT. Section 20.1-02-17 of the North Dakota Century Code is hereby amended and reenacted to read 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 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 by the federal agency administering these Acts.

Hunting and fishing license fees and application fees assessed under section 2 of this Act shall only be used for departmental programs and administration.

SECTION 2. A new section to chapter 20.1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Elk, moose, and bighorn sheep - Application fee. Each person applying for a license to hunt elk, moose, or bighorn sheep under this chapter shall be assessed a nonrefundable application fee of three dollars for each such application in addition to the fee charged for the issuance of the license under this chapter.

Approved March 22, 1985

CHAPTER 279

HOUSE BILL NO. 1606
(Gunsch, R. Hausauer)

UNDERWATER SPEARFISHING

AN ACT to create and enact a new section to chapter 20.1-08 of the North Dakota Century Code, relating to the governor's proclamation for a season for underwater spearfishing.

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

SECTION 1. Governor's proclamation concerning underwater spearfishing. The governor shall by proclamation provide for a season for resident underwater spearfishing for game fish in this state in a manner as the governor shall prescribe for the fishing seasons beginning in 1986 and 1987.

Approved April 4, 1985

GOVERNMENTAL FINANCE

CHAPTER 280

SENATE BILL NO. 2224
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

CERTIFICATES OF INDEBTEDNESS

AN ACT to amend and reenact sections 21-02-02, 21-02-05, 21-02-07, 21-02-08, 21-02-09, 21-02-10, 21-02-11 and 21-02-13 of the North Dakota Century Code, relating to the issuance and recording of certificates of indebtedness by taxing districts; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 21-02-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-02. Certificates of indebtedness - By whom issued - Term - Interest - Tax when deemed levied. Counties, cities, townships, school districts, park districts, irrigation districts, water ~~conservation~~ and ~~flood control~~ resource districts, Garrison Diversion Conservancy District, county park districts, or joint park districts shall have power to borrow in anticipation of revenues to be derived from proceeds to be received under currently existing contracts with the bureau of Indian affairs and from taxes already levied. The aggregate amount of such borrowings at any time shall not exceed the amount of uncollected taxes which have been levied during the year in which the borrowing is made, plus uncollected taxes remaining upon the tax lists of the four preceding years, exclusive of levies for the purpose of retiring bond issues and the interest thereon, plus funds to be received under currently existing bureau of Indian affairs contracts. For the purpose of borrowing, all such taxing districts may issue certificates of indebtedness. A certificate of indebtedness shall consist of an agreement on the part of the taxing

district to pay a stated sum on a specified date, or on or before a specified date not more than twenty-four months in the future, together with interest thereon at a rate or rates resulting in an average annual net interest cost not exceeding twelve percent per annum if they are sold privately, which may be made payable semiannually. There is no interest rate ceiling on a certificate sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificate shall be signed on behalf of the district by its president or chairman and also by its auditor or secretary, and shall be payable out of funds derived from uncollected taxes levied for the current tax year and four previous years which have not been set aside for the payment of other certificates of indebtedness pursuant to sections 21-02-07, 21-02-08, and 21-02-09 and from funds received under bureau of Indian affairs contracts currently existing. However, a certificate of indebtedness shall be the general obligation of the issuing taxing district.

SECTION 2. AMENDMENT. Section 21-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-05. Registration Recording of certificates of indebtedness. The county auditor, at the time of attaching his certificate the certification to any certificate of indebtedness, shall register record such certificate of indebtedness in his bond register in record space set aside for the registration recording thereof. Such registration record shall show the name and address of the purchaser. if such certificate is negotiated, the holder thereof shall present the same to the county auditor who thereupon shall note in his register the name and address of the purchaser contain the same information as required for the recording of bonds in section 21-03-23.

SECTION 3. AMENDMENT. Section 21-02-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-07. Taxes, revenues and bureau of Indian affairs contract moneys constitute special fund to pay certificates. When any taxing district has issued certificates of indebtedness pursuant to the terms of this chapter, the taxing district shall cause the county auditor ~~shall~~ to set aside all money from bureau of Indian affairs contracts and, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or taxes collected from levies for the respective years against which such certificates have been issued, except those for sinking and interest funds thereafter

accruing to the credit of such the district. The same money shall be held by the county treasurer in a special fund to be used only for the purpose of retiring such the certificates of indebtedness and paying interest thereon until sufficient funds shall have been accumulated from the bureau of Indian affairs contract moneys, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or collection of levies of any year or years against which certificates of indebtedness have been issued to retire the certificates of that year.

SECTION 4. AMENDMENT. Section 21-02-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-08. **Percentage of current taxes used to pay delinquent certificates of indebtedness.** If sufficient funds are not collected under currently existing bureau of Indian affairs contracts, a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision, or from levies against which certificates of indebtedness are issued to retire such certificates, both principal and interest, within two months after their due date, there shall be set aside from current tax collections not less than ten percent ~~nor more~~ than thirty percent of the amount of such collections until such past due certificates have been paid. Within one month after the due date of a certificate of indebtedness, the governing board of the issuing taxing district shall transmit to the county auditor its duly authenticated resolution directing the percentage of tax collections which shall be retained by the county treasurer to retire such certificate within the foregoing limitations. If such resolution is not received within two months after the due date of such certificate, the county auditor shall retain thirty percent of such collections.

SECTION 5. AMENDMENT. Section 21-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-09. **Certificates - Payable in order or before maturity**
~~--Cancellation.~~ Certificates of indebtedness shall be paid in the order of their issuance, the certificate first issued being first paid from the collection of taxes. Upon the accumulation of funds sufficient to retire a certificate, whether the same is due or not, the holder thereof shall be notified by the county auditor and shall be required promptly to present the certificate for payment and cancellation and thereafter interest thereon shall cease. Upon presentment of such certificate to the county auditor, he shall certify the amount due thereon to the county treasurer, who shall

pay to the holder the amount thereof. The certificate shall be canceled and its cancellation shall be noted on the bond register and the canceled certificate returned to the treasurer of the issuing taxing district.

SECTION 6. AMENDMENT. Section 21-02-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-10. Municipalities Taxing districts having population over four thousand exempt from certain provisions. Any ~~city, school district, or park taxing~~ district having a population of over four thousand may issue certificates of indebtedness in any amount not in excess of uncollected taxes of the current year, plus uncollected taxes of prior years standing to the credit of the district, plus amounts still owed it under currently existing bureau of Indian affairs contracts, in such form and manner and subject to such terms and conditions as the governing board may prescribe, and need not comply with nor conform to any of the other provisions of this chapter pertaining to the issuance of certificates of indebtedness unless such board shall choose to avail itself of such provisions.

SECTION 7. AMENDMENT. Section 21-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-11. **Advertising for bids - When required - Procedure similar to bond sales.** If the governing board of any taxing district determines to borrow upon certificates of indebtedness, it shall follow the procedure and shall be subject to the penalties prescribed in the provisions relating to the sale of bonds in chapter 21-03. Certificates of indebtedness need not be advertised for bids:

1. If they are sold to the state board of university and school lands, the Bank of North Dakota, the North Dakota municipal bond bank, or in case other trust funds administered by public officials are invested in them; or
2. If they do not exceed the total sum of one hundred thousand dollars.

SECTION 8. AMENDMENT. Section 21-02-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-02-13. **Certificates of indebtedness in anticipation of revenue to be received from the state.** Any political subdivision which will receive a

distribution of revenue pursuant to a state appropriation or statutory or constitutional provision shall, in anticipation of such revenue, have power to borrow not more than the amount it will receive from that source during that fiscal year. For the purpose of borrowing, all such political subdivisions may issue certificates of indebtedness.

Certificates of indebtedness issued pursuant to this section shall provide for payment by the political subdivision of a stated sum on or before a specified date not more than six months after the anticipated date of receipt of the revenue, together with interest thereon at a specified rate not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on certificates sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificates shall be payable out of the anticipated revenue.

For the purpose of administering the provisions of this section, all of the provisions of this chapter, to the extent consistent herewith, that relate to signing and issuance of certificates of indebtedness, the certificate of the county auditor on the certificates of indebtedness, the registration recording of certificates of indebtedness, certifying the amount to be received from the state by a political subdivision, setting aside the amount to be received for payment of the certificates, order of payment of such certificates, except for municipalities over four thousand in population, and advertising for bids, including the exceptions for taxing districts over four thousand in population, shall govern the administration of the provisions of this section.

SECTION 9. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 281

HOUSE BILL NO. 1548
(Representatives Ulmer, Skjerven, Hughes)

VOTE REQUIRED TO ISSUE BONDS

AN ACT to amend and reenact section 21-03-07 and subsection 1 of section 57-15-17 of the North Dakota Century Code, relating to the voter approval requirements for the issuance of general obligation bonds and the use of school building funds.

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

SECTION 1. AMENDMENT. Section 21-03-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-07. Election required - Exceptions. No municipality, and no governing board thereof, ~~except school districts,~~ shall issue bonds without being first authorized to do so by a vote equal to ~~sixty-six and two-thirds percent,~~ in the case of municipalities having a population of less than five thousand, or a vote of sixty percent in the case of municipalities having a population of five thousand or more, of all the qualified voters of such municipality voting upon the question of such issue except:

1. As otherwise provided in section 21-03-04.
2. The governing body may issue bonds of the municipality for the purpose and within the limitations specified by subdivision e of subsection 1 of section 21-03-06, subdivision g of subsection 2 of section 21-03-06, and subsection subsections 4.1 and 7 of section 21-03-06 without an election.
3. Any municipality, as defined and listed in section 21-03-06, may issue its bonds for the replacement of municipally owned public buildings within such municipality upon the authorization of sixty percent of the electors voting upon the question of such issue in the following cases-

- a- When such building has been destroyed by fire, wind, explosion, or other cause-
- b- When, after a public hearing, the governing body of such municipality shall adopt a resolution declaring it necessary to replace a municipally owned public building for the reason that such building has become unsafe or inadequate for use and occupancy as a public building, or for keeping the public records or property of such municipality housed therein. The governing body of such municipality shall give notice of such public hearing by a statement published once each week for two successive weeks in the official county newspaper, if the municipality is other than a city, or, if the municipality is a city, in the city's official newspaper as provided in section 40-01-09. Such statement shall set forth the time and place of the hearing and the reasons therefor-
- 4- The governing body of any municipality having a population of five thousand or more may issue bonds of the municipality for the purpose of providing funds to meet its share of the cost of any federal-aid highway project undertaken under an agreement entered into by authority of such the governing body with the United States government, the commissioner of the state highway department, the board of county commissioners, or any of them, including, but without limitation, the cost of any construction, improvement, financing, planning, and acquisition of right of way of a federal-aid highway routed through the municipality and of any bridges and controlled access facilities thereon and any necessary additional width or capacity of the roadway thereof greater than that required for federal or state highway purposes, and of any necessary relaying of utility mains and conduits, curbs and gutters, and the installation of utility service connections and street lights; provided, that the portion of the total cost of such project to be paid by the municipality under such agreement, including all items of cost incurred directly by the municipality and all amounts to be paid by it for work done or contracted for by other parties to the agreement, shall not exceed a sum equal to thirty percent of the total cost, including engineering and other incidental costs, of all construction and reconstruction work to be done plus fifty percent of the total cost of all right of way to be acquired in connection therewith. Nothing herein shall be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments, or utility revenues any work incidental to any such project, in the manner and to the extent otherwise permitted by law, and the cost of any work so financed shall not be included in computing the portion of the project cost payable by the municipality, within the meaning of this subsection,

unless such work is actually called for by the agreement between the municipality and the other governmental agencies involved.

5- 4. The governing body of any city may also by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the city for the purpose of providing funds to pay the cost of any improvement of the types stated below, to the extent that the governing body determines that such cost should be paid by the city and should not be assessed upon property specially benefited thereby; provided that the initial resolution authorizing such bonds shall be published in the official newspaper, and any owner of taxable property within the city may within sixty days after such publication file with the city auditor a protest against the adoption of the resolution. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under such initial resolution shall be barred. This procedure is authorized for the financing of the following types of improvements:

- a. Any street improvement, as defined in subsection 2 of section 40-22-01, to be made in or upon any federal or state highway or any other street designated by ordinance as an arterial street.
- b. The construction of a bridge, culvert, overpass, or underpass at the intersection of any street with a stream, watercourse, drain, or railway, and the acquisition of any land or easement required for that purpose.
- c. Any improvement incidental to the carrying out of an urban renewal project, the issuance of bonds for which is authorized by subsection 4 of section 40-58-13.

Nothing herein shall be deemed to prevent any municipality from appropriating funds for or financing out of taxes, special assessments or utility revenues any work incidental to any such improvement, in the manner and to the extent otherwise permitted by law.

6- The school board of any school district may issue bonds of the municipality for the purposes and within the limitations specified by subsection 4 of section 21-03-06 upon the authorization of sixty percent of the electors voting upon the question of such issue.

7- 5. The governing body of any city may also by resolution adopted by a two-thirds vote dedicate the mill levies as

authorized by sections 57-15-42 and 57-15-44 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public buildings or fire stations; provided, that the initial resolution authorizing the mill levy dedication and general obligation bonds shall be published in the official newspaper, and any owner of taxable property within the city may within sixty days after publication file with the city auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the city, as theretofore last finally equalized, all further proceedings under the initial resolution shall be barred.

6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 57-15-06.6 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may within sixty days after publication file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.
7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the school district may within sixty days after publication file with the school district clerk a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the

protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

8. The governing body of any city having a population of twenty-five thousand persons or more may use the provisions of subsection 4 3 to provide funds to participate in the cost of any construction, improvement, financing, and planning of any bypass routes, interchanges, or other intersection improvements on a federal or state highway system which is situated in whole or in part outside of the corporate limits of the city; provided, that the governing body thereof shall determine by resolution that the undertaking of such work is in the best interest of the city for the purpose of providing access and relieving congestion or improving traffic flow on municipal streets.

SECTION 2. AMENDMENT. Subsection 1 of section 57-15-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. a. All revenue accruing from appropriations or tax levies for a school building fund together with such amounts as may be realized for building purposes from all other sources, shall be placed in a separate fund known as a school building fund, and shall be deposited, held, or invested in the same manner as the sinking funds of such school district or in the purchase of shares or securities of federal or state-chartered savings and loan associations within the limits of federal insurance.
- b. The funds shall be used solely and exclusively for any of the following purposes:
 - (1) The erection of new school buildings, or additions to old school buildings, or the making of major repairs to existing buildings.
 - (2) The payment of rentals upon contracts with the state board of public school education.
 - (3) The payment of rentals upon contracts with municipalities for vocational education facilities financed pursuant to chapter 40-57.
 - (4) Within the limitations of school plans as provided in subsection 2 of section 57-15-16.

(5) The payment of principal, premium, if any, and interest on bonds issued pursuant to subsection 7 of section 21-03-07.

- c. The funds shall be paid out by the custodian thereof only upon order of the school board, signed by the president and the clerk of the school district, and the order must recite upon its face the purpose for which payment is made.

Approved March 14, 1985

CHAPTER 282

HOUSE BILL NO. 1171
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

REGISTRATION, CERTIFICATION, AND DELIVERY OF BONDS

AN ACT to amend and reenact sections 21-03-22 and 21-03-23 of the North Dakota Century Code, relating to the registration, certification, and delivery of bonds.

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

SECTION 1. AMENDMENT. Section 21-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-22. ~~Registration; certification; and delivery~~ Recording of bonds. After the bonds have been executed, they shall be delivered to the county auditor, except in cities or school districts or park districts having a population of more than four thousand, in which cities, school districts, or park districts they shall be delivered to the auditor, clerk, or secretary thereof. When ~~such the~~ bonds are delivered to the county auditor, there shall be delivered to him a certified copy of the resolution of the governing body showing their sale. The county auditor, or the auditor, clerk, or secretary of a city, school district, or park district having a population of more than four thousand, upon receipt of ~~such the~~ bonds, shall ~~register record~~, in a separate book provided for the purpose, an accurate description of every bond so issued, ~~specifying its number, date, purpose, amount, rate of interest, when and where payable, and the coupons attached.~~ In all cases where the ~~registering recording~~ officer is not the ~~recording~~ an officer of the governing body of the municipality issuing the bonds, there also shall be filed ~~with him~~ a certified copy of all proceedings of the municipality relating to ~~such the~~ issue. When the transaction relating to the sale of ~~said the~~ bonds is to be consummated, there shall be delivered to the ~~registering recording~~ officer a detailed financial statement of the municipality given by the ~~treasurer auditor, clerk, or secretary~~ of the municipality under oath. When ~~such the~~ bonds have been ~~fully registered recorded~~ as required by this section, and when ~~he the~~ recording officer has received ~~such the~~ detailed financial statement of the municipality, the ~~registering recording~~ officer shall sign an endorsement on the back of each bond certifying that ~~such the~~ bond is ~~registered fully~~

recorded in his that office, and, if such is the truth, that such the bond is issued in accordance with law and is within the debt limit of the municipality issuing the same bond. No bond shall be valid without such the certificate endorsed thereon. When the bonds have been so registered and certified, such registering and certifying officer shall deliver the same to the purchaser thereof in accordance with the terms of the resolution awarding their sale, and shall forthwith transmit the proceeds thereof to the treasurer of the municipality.

SECTION 2. AMENDMENT. Section 21-03-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-23. Bond register record. The county auditor shall keep a bond register record in which shall be entered, as to each issue of bonds issued by a taxing district in the county required by the provisions of section 21-03-22 to be delivered to the county auditor after execution, a record of the date of issuance, the aggregate amount authorized, the aggregate amount issued, the number of bonds and the denomination of each, the date of maturity of each bond, the rate of interest, the amount of the levy on taxable property for each year certified by the taxing board, the amount levied on any other object of taxation by the municipality, the amount pledged or allocated from other sources of revenue of the municipality, and the amount of any annual or periodic payments or distributions appropriated or allocated by the legislative assembly. Such bond register also shall contain similar information regarding each issue of certificates of indebtedness of each taxing district in the county. The state auditor shall prescribe for the use of the county auditors a uniform form of bond register.

Approved March 27, 1985

CHAPTER 283

HOUSE BILL NO. 1484
(O'Shea, Hill)

FLOOD CONTROL LEASE PAYMENTS

AN ACT to amend and reenact section 21-06-10 of the North Dakota Century Code, relating to the allocation of moneys received through leasing of land acquired by the United States for flood control.

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

* SECTION 1. AMENDMENT. Section 21-06-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-06-10. Moneys received through leasing of lands acquired by United States for flood control distributed to counties for schools and roads. The funds so received, as in said Public Law 79-526 (60 Stat. 642, 33 U.S.C. 701c-3) set forth, by any county in this state, the state treasurer of the state of North Dakota shall pay over the moneys allocated to the state under 33 U.S.C. 701(c)(3) to the county or counties entitled thereto as in said public law set forth. The first one-half of such funds shall be distributed to receive them in proportion to the area of the land in the county acquired by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) as that area bears to the total of these federal lands in the state. A county receiving an allocation under this section shall disburse the moneys received as follows:

1. One-half must be paid to the school districts in the county which have lost land subject to taxation by reason because of the acquisition of lands by the United States on the basis of the proportionate amount of such lands acquired by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) in proportion to the area of these federal lands in each district as that area bears to the total of such lands in all of the school districts in the county. If, however, all of the land in any such a district shall have been acquired by the United States the, that district's proportionate share of such the funds assignable to such district shall allocated under this subsection must be paid into, and disbursed in

* NOTE: Section 21-06-10 was also amended by section 34 of Senate Bill No. 2086, chapter 82.

the manner provided by law for the county tuition fund and expended according to the law governing that fund.

2. The next quarter of such funds shall One-quarter must be paid to such counties the county for road purposes to be expended as the county commissioners shall determine.
3. The final quarter of such funds shall be distributed to must be allocated among the organized townships, if any, within each which have lost land subject to taxation because of land acquisitions by the United States for which compensation is being provided under 33 U.S.C. 701(c)(3) and the county for road purposes to be expended as the township supervisors shall determine. This amount shall be allocated among the various organized townships on the basis of the proportionate true and full valuation, including property valued pursuant to section 57-02-14, of such property within that county. If any area of a county does not lie within an organized township but creates an impact whereby such land is only assessable through an organized township such funds shall be allocated to that township. If any area of a county does not lie within an organized township, a portion of the final quarter of such funds shall be allocated to the county on the basis of the proportionate true and full valuation, including property valued pursuant to section 57-02-14, of such property within that county in proportion to the area of these lands in each township as that area bears to the total area of these federal lands in the county. The county must be allocated a similar proportionate share based on the area of these lands in the county not within an organized township.

This section shall apply to all funds heretofore received or to be received by the counties entitled thereto.

Approved March 27, 1985

CHAPTER 284

SENATE BILL NO. 2049
(Legislative Council)
(Interim Budget "B" Committee)

STATE INVESTMENT BOARD MEMBERS AND MEETINGS

AN ACT to amend and reenact sections 21-10-01 and 21-10-04 of the North Dakota Century Code, relating to the membership and meetings of the state investment board.

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

SECTION 1. AMENDMENT. Section 21-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-01. State investment board - Membership. The North Dakota state investment board ~~shall consist~~ consists of the governor, the state treasurer, the ~~state land~~ commissioner of university and school lands, the chairman of the workmen's compensation bureau, and the ~~state commissioner of insurance commissioner~~, the executive secretary of the teachers' fund for retirement, and two members who are experienced in the field of investments, who have considerable knowledge of the investments enumerated in section 21-10-07, and who are not otherwise employed by the state of North Dakota. The ~~ex officio~~ members of the board shall appoint the members with investment experience to four-year terms concurrent with the four-year terms of the elected officials on the board. 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 2. AMENDMENT. Section 21-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-04. Board - Meetings --~~Quorum~~. The state investment board shall select one of its members to serve as chairman, and shall meet at the call of the director or upon written notice signed by two members of the board. Such meetings shall be held not less than four times per year. ~~Three members of the board shall constitute a quorum for the transaction of business-~~

Approved April 4, 1985

CHAPTER 285

SENATE BILL NO. 2050
(Legislative Council)
(Interim Budget "B" Committee)

STATE INVESTMENT BOARD INVESTMENT GOALS AND REPORTING

AN ACT to create and enact sections 21-10-02.1 and 21-10-06.1 of the North Dakota Century Code, relating to the state investment board's policies on investment goals and objectives and the state investment board investment reporting; and to amend and reenact section 54-52-04 of the North Dakota Century Code, relating to the public employees retirement system's investment reporting.

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

SECTION 1. Section 21-10-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

21-10-02.1. Board - Policies - Investment goals and objectives. The board shall establish policies on investment goals and objectives for the funds enumerated in section 21-10-06. The policies must provide for:

1. The definition and assignment of duties and responsibilities to advisory services and persons employed by the board.
2. Acceptable rates of return, liquidity, and levels of risk.
3. Long-range asset allocation goals.
4. Guidelines for the selection and redemption of investments.
5. Investment diversification, investment quality, qualification of advisory services, and amounts to be invested by advisory services.
6. The type of reports and procedures to be used in evaluating performance.

Each fund enumerated in section 21-10-06 shall submit to the board the fund's policies on investment goals and objectives.

SECTION 2. Section 21-10-06.1 of the North Dakota Century Code is hereby created and enacted to read 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 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 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 3. AMENDMENT. Section 54-52-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-04. Board authority. The board shall have the following powers and duties-

1. The board shall have the power and duty to adopt such rules and regulations as may be necessary to implement the provisions of this chapter, and to manage the system, subject to the limitations of this chapter. ~~it shall have~~ The board has the powers and privileges of a corporation, including the right to sue and be sued in its own name as ~~such~~ the board. The venue of all actions in which the board is a party shall ~~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.

* NOTE: Section 54-52-04 was also amended by section 1 of House Bill No. 1132, chapter 581.

4. The board shall arrange for actuarial and medical advisers for the system. ~~It~~ 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; ~~and as seen after July 1, 1977, as practicable and~~ once every even-numbered year ~~thereafter,~~ 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 ~~such~~ other duties as may be assigned by the board.
5. The state shall provide the board ~~shall be provided by the state~~ 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 board shall select the funding agent or agents and establish an investment agreement contract. The contract ~~shall~~ must authorize the funding agent or agents to hold and invest moneys for the system. No moneys of the system ~~shall~~ may be invested by the board. ~~Said~~ The moneys ~~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. All securities, agreements, contracts, or instruments of value ~~shall~~ must be delivered to the Bank of North Dakota, or its agents. Except for dispensing money to the funding agent or agents, paying prior service benefits, or making withdrawal payments and refunds, the board shall expend money only for administrative purposes by preparing an appropriate voucher and submitting such voucher to the office of management and budget and as limited by the appropriation first made by the legislative assembly.
7. The board shall administer ~~the provisions of~~ chapters 39-03.1 and 54-52.1.
8. The board ~~shall~~ annually prepare a summarized financial statement shall report in accordance with section 21-10-06.1 ~~the investment performance of the fund funds that it administers~~ and distribute a copy to each participant.

Approved March 22, 1985

CHAPTER 286

SENATE BILL NO. 2051
 (Legislative Council)
 (Interim Budget "B" Committee)

INVESTMENT BOARD INVESTMENTS

AN ACT to amend and reenact section 21-10-07 of the North Dakota Century Code, relating to legal investments of the state investment board.

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

SECTION 1. AMENDMENT. Section 21-10-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-07. Legal investments. The following types of securities ~~shall be and investments are~~ legal investments for funds, the investment of which is under the supervision of the board:

1. Securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof.
2. Bonds or certificates of indebtedness of ~~the~~ this state ~~of North Dakota.~~
3. General obligation bonds of any other state.
4. Bonds, certificates of indebtedness, or warrants of any political subdivision of ~~the~~ this state ~~of North Dakota~~ which constitute the general or contingent general obligations of the issuing tax authority, or revenue bonds of a political subdivision issued for public utility purposes or under the authority of ~~the Municipal Industrial Development Act contained in~~ chapter 40-57.
5. Loans and mortgage investments, insured or guaranteed in any manner, wholly or in part, or for which a commitment to so insure or guarantee has been issued by the United States or any instrumentality or agency thereof; or other investments that are issued by or fully insured or guaranteed by the United States or any instrumentality or

- agency thereof or ~~the~~ this state of North Dakota or any instrumentality or agency thereof.
6. Bank of North Dakota certificates of deposit.
 7. Building North Dakota savings and loan association and commercial bank certificates of North Dakota building and loan associations, deposit to the extent that such certificates are fully insured or guaranteed by the United States or an instrumentality or agency thereof.
 8. Short-term commercial and finance company paper traded on a national basis and issued by a corporation having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period.
 9. Bonds, notes, or debentures of any corporation duly incorporated under the laws of any state of the United States rated as "A" or higher by a nationally recognized rating service approved by the board.
 10. Nonrated bonds, notes, or debentures of any corporation duly incorporated under the laws of any state of ~~the United States~~ and whose principal business operations are carried on within ~~the~~ this state of North Dakota, having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period.
 11. Evidence of indebtedness issued by instrumentalities of this state, including evidence of indebtedness issued by the North Dakota housing finance agency.
 12. Mortgage loans purchased from lenders or certificates of indebtedness representing pools of mortgage loans purchased from lenders if the mortgages are made to persons to finance the purchase or substantial rehabilitation of owner-occupied, single family residential dwellings, including mobile homes and manufactured housing. The loans purchased must be secured by mortgages on real property located in this state. "Lender" means any bank or trust company chartered in this state, any national banking association located in this state, any state or federal savings and loan association located in this state, and any federal housing

administration approved mortgagee or other mortgage lending institution engaged in home mortgage lending in this state.

13. Investments enumerated under chapter 15-03 as legal investments for the board of university and school lands.
14. Common or preferred stocks of any corporation organized under the laws of any state, but not more than twenty percent of the assets of each fund may be invested in common and preferred stocks.

As used in this section the term "net income" ~~shall mean~~ means income after deducting operating and maintenance expenses, all taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income and expense.

The term "fixed charges" ~~shall include~~ includes interest on funded and unfunded debt, amortization of debt discount and expense, and rentals for leased property.

Approved March 28, 1985

CHAPTER 287

SENATE BILL NO. 2074
(Legislative Council)
(Interim Industry, Business and Labor Committee)

HEALTH COUNCIL MEMBERSHIP

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 THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council shall consist of eleven 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 three lay persons with broad civic interests representing varied segments of the population 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 ~~hereinbefore~~ provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on ~~said~~ the council are about to expire. The officers of ~~said~~ 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 state fire marshal, the executive secretary of the state board of nursing, the executive

director of the state social service board department of human services, the executive director of the North Dakota Indian affairs commission, and such any other persons as the governor may designate. The council shall meet at least twice each year and at such 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 such any other committees as said the council may find necessary. The health committee shall consist 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 representatives of civic interests health care consumer members. The hospital committee shall consist 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 representatives of civic interests 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 shall 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. Such 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 shall 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 March 27, 1985

CHAPTER 288

SENATE BILL NO. 2423
(Parker)

PHYSICIAN RECORDS CONFIDENTIALITY

AN ACT to amend and reenact section 23-01-02.1 of the North Dakota Century Code, relating to the confidentiality of required reports for hospitals and extended care facilities.

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

SECTION 1. AMENDMENT. Section 23-01-02.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-02.1. Hospital utilization committees - Internal quality assurance review committees - Reports - Immunity. Any information, data, reports, or records made available to a mandatory hospital committee or extended care facility committee as required by state or federal law or by the joint commission on accreditation of hospitals by a hospital or extended care facility or any physician or surgeon or group of physicians or surgeons operating a clinic or outpatient care facility in this state or to an internal quality assurance review committee of any hospital or extended care facility in this state are confidential and may be used by such committees and the members thereof only in the exercise of the proper functions of the committees. The proceedings and records of such a committee are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter which is the subject of consideration by the committee. Information, documents, or records otherwise available from original sources are not immune from discovery or use in any civil action merely because they were presented during the proceedings of such a committee, nor may any person who testified before such a committee or who is a member of it be prevented from testifying as to matters within that person's knowledge, but a witness cannot be asked about that witness' testimony before the committee. This section does not relieve any person of any liability which the person has incurred or may incur to a patient as a result of furnishing health care to the patient. No physician, hospital, or institution furnishing information, data, reports, or records to any such committee with respect to any patient examined or treated by such physician or confined in such hospital or institution is, by reason of furnishing such

information, liable in damages to any person, or answerable for willful violation of a privileged communication. No member of such a committee is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him.

Approved March 30, 1985

CHAPTER 289

HOUSE BILL NO. 1554
(Hedstrom)

BURIAL OF PERSONS WITHOUT SURVIVORS

AN ACT to amend and reenact subdivisions c, d, and e of subsection 4 of section 23-06-03 of the North Dakota Century Code, relating to payments by county social service boards for burial of persons who died without survivors and without a sufficient estate to pay for burial.

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

SECTION 1. AMENDMENT. Subdivisions c, d, and e of subsection 4 of section 23-06-03 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- c. The cost of the grave box or vault, not to exceed the sum of one hundred eighty two hundred thirty-five dollars, provided that a grave box or vault is required by the cemetery before a burial may be made.
- d. The cost of a grave space, not to exceed the sum of one hundred seventy-five dollars.
- e. Any grave opening and closing expenses, not to exceed the sum of one hundred ~~twenty~~ seventy-five dollars.

Approved March 27, 1985

CHAPTER 290

SENATE BILL NO. 2446
(Lips)

PRE-NEED FUNERAL SERVICE CONTRACTS

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, relating to deposit of funds for pre-need funeral service contracts.

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

SECTION 1. AMENDMENT. Section 23-06-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited in a bank or trust company - Bank shall keep record of deposit - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise shall be deposited within thirty days in a bank or trust company carrying federal deposit insurance and located within the state of North Dakota. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. Such funds may be released by the bank or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death shall be furnished to the bank or trust company as prima facie evidence of death. Such funds may be released by the bank or trust company to the person making such payment, prior to the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank or trust company to the depositor at the request of the person making such payment.

Any bank or trust company receiving such a deposit shall keep a complete record thereof, showing the name of the depositor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within the state of North Dakota.

Any person who willfully violates this section or any rule or order of the commissioner pursuant hereto is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense shall not bar a prosecution or conviction for any other offense.

Approved March 28, 1985

CHAPTER 291

HOUSE BILL NO. 1555
(Riley, Moore)

COUNTY AUTHORITY OVER ENDANGERED GRAVESITES

AN ACT to create and enact a new section to chapter 23-06 of the North Dakota Century Code, relating to the authority of counties concerning endangered gravesites; and to declare an emergency.

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

SECTION 1. A new section to chapter 23-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Endangered gravesites - County action authorized. Notwithstanding any other provisions of this chapter, the county commissioners of each county may move graves or cremate the bodies in any graves which are located in the county and maintained by the county when the gravesites are in eminent danger of destruction by natural elements. The county commissioners shall, to the extent possible, give personal notice to a relative of a deceased person whose grave is to be moved or whose body is to be cremated if the identity of that person and the identity of the relative are known. The county commissioners shall provide at least thirty days' prior notice in a legal newspaper of the county of the commissioners' intended action to be taken pursuant to this section.

SECTION 2. **EMERGENCY.** This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 292

SENATE BILL NO. 2232
(Committee on Social Services and Veterans Affairs)
(At the request of the State Laboratories Department)

HOTEL FIRE PROTECTION

AN ACT to amend and reenact sections 23-09-03, 23-09-05, 23-09-06, and 23-09-07 of the North Dakota Century Code, relating to fire protection measures in hotels, motels, roominghouses, and lodginghouses; and to repeal section 23-09-04 of the North Dakota Century Code, relating to fire escapes in hotels and lodginghouses.

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

SECTION 1. AMENDMENT. Section 23-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-03. Fire escapes required in hotels or lodginghouses more than two stories high. Exiting requirements. Every hotel or motel, lodginghouse, which is more than two stories high shall have a hall on each floor extending from one outside wall to the other, and unless such hotel or lodginghouse is equipped with interior fireproof stairways approved by the state fire marshal, there shall be at the end of each such hall an iron fire escape which shall or roominghouse constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 with the following exceptions:

1. Connect all of the floors above the first floor. All hotels, motels, roominghouses and lodginghouses in existence at the time of implementation of this section shall be required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.
2. Be so arranged that it can be reached by at least two openings from each floor. If the hotel, motel, roominghouse, or lodginghouse is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

- 3- Be well fastened and secured to the outside walls of the buildings;
- 4- Have a landing at each floor which is at least six feet {1.83 meters} long and three feet {-.92 meters} wide and which is guarded by an iron railing which is at least three feet {-.92 meters} high;
- 5- Connect all floor landings by iron stairs which are at least two feet {-.61 meters} wide; have steps with a tread of at least six inches {152.4 millimeters}; and be protected by a well secured handrail on both sides;
- 6- Reach to within ten feet {3.05 meters} of the ground; and
- 7- Be equipped with a drop ladder which is at least twelve inches {304.8 millimeters} wide and which reaches from the lower platform to the ground.

A perpendicular iron ladder may be used in lieu of the stairs described in subsection 5 if such ladder is placed at the extreme outside of the platform at least two feet {-.61 meters} from the walls of the building and is equipped with round iron rungs placed not more than fifteen inches {381 millimeters} apart.

SECTION 2. AMENDMENT. Section 23-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required. Access to fire escapes required under the provisions of this chapter shall be kept free and clear at all times of all obstructions of any and every nature. The proprietor of the hotel or, motel, lodginghouse, or roominghouse shall-

- 1- Post and maintain in a conspicuous place in each hall and guest room on each floor other than the ground floor; if such hotel or lodginghouse is more than two stories high-
 - a- A printed notice, in characters not less than two inches {50.8 millimeters} high, calling attention and directing the way to the fire escape; and
 - b- A green light at the end of the hall and directly in front of the fire escape.
- 2- Post and maintain in a conspicuous place in every bedroom or sleeping apartment on other than the ground floor; if such hotel or lodginghouse is not more than two stories high, a printed notice, in characters not less than two inches {50.8 millimeters} high, calling attention to the rope fire escape and giving directions for its use; or if other than a rope fire escape is used, calling attention and directing the way to the same provide for adequate

exit lighting and exit signs as defined in the state building code, chapter 54-21.3.

SECTION 3. AMENDMENT. Section 23-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-06. Chemical fire extinguishers - Standpipes. Each hotel, motel, roominghouse, and lodginghouse shall be provided with at least one chemical fire extinguisher, approved extinguishers as defined by the National Board of Fire Underwriters, for every twenty-five hundred square feet {232-26 square meters} or less of floor area. Such extinguishers shall be placed in a convenient location in the public hallways outside of the sleeping rooms, and always shall be in condition for use. In lieu of such fire extinguishers, a lodginghouse or hotel may be equipped with not less than one and one-fourth inch {31.75 millimeters} standpipe with sufficient water pressure and hose connections and hose attached thereto of sufficient length to reach both ends of the hall in which the standpipe is located. The state fire marshal shall adopt and promulgate reasonable rules and regulations governing the minimum specifications for approved fire extinguishers national fire protection association standard number ten in quantities as defined by the state building code and the state fire code. Standpipe and sprinkler systems shall be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems shall conform with the adopted rules of the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building shall not be enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal shall be sold or offered for sale within the state.

SECTION 4. AMENDMENT. Section 23-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-07. Elevator shafts to be protected to prevent spread of fire. Every hotel which is equipped with a passenger or freight elevator shall cause the shaftway thereof to be enclosed with an iron sheeting as nearly airtight as is practicable and shall provide automatic floor traps at each door in the shaft. Such appliances shall be built in the most approved manner for the prevention or spread of fire by means of such shaft. All new construction of, remodeling of, or additions to hotels, motels, roominghouses, and lodginghouses equipped with passenger or freight elevators must comply with state building code fire protection requirements.

SECTION 5. REPEAL. Section 23-09-04 of the North Dakota Century Code is hereby repealed.

Approved March 29, 1985

CHAPTER 293

SENATE BILL NO. 2463
(Krauter, Wogsland, Parker, David)

BED AND BREAKFAST REGULATION

AN ACT to create and enact a new chapter to title 23, and a new section to chapter 23-09 of the North Dakota Century Code, relating to bed and breakfast facility regulation, and to hotels, lodginghouses, restaurants, and boardinghouses; and to amend and reenact section 19-02-24 of the North Dakota Century Code, relating to rooms in which food is stored not to be used for living quarters.

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

SECTION 1. A new chapter to title 23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Bed and breakfast facilities - Powers of state laboratories department. The state laboratories department, 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.

License fee. The annual license fee paid to the state laboratories department by proprietors of bed and breakfast facilities is five dollars.

Definitions. As used in this chapter:

1. "Bed and breakfast facility" means a private home which is used to provide accommodations for a charge to the public, with at most two lodging units for up to eight persons per night and in which no more than two family style meals per day are provided.
2. "Family style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food

not consumed by those persons is not reused or fed to other people if the food is unwrapped.

SECTION 2. AMENDMENT. Section 19-04-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02-24. Rooms in which food stored, prepared, or sold not to be used for living quarters. No room or rooms used for the storage, display, preparation, use, or sale of food shall be used as a sleeping, dressing, or living room, nor shall any sleeping, dressing, or living room be adjacent to, nor shall it open into, any such place, nor shall dogs, cats, or other domestic animals be permitted to occupy such rooms. This section does not apply to bed and breakfast facilities for which rules have been adopted under section 1 of this Act.

SECTION 3. A new section to chapter 23-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption for bed and breakfast facilities. This chapter does not apply to bed and breakfast facilities for which rules have been adopted under section 1 of this Act.

Approved March 28, 1985 .

CHAPTER 294

SENATE BILL NO. 2303
(Senators Todd, Freborg)
(Representatives Retzer, Unhjem)

SMOKE DETECTION SYSTEMS IN RENTAL PROPERTY

AN ACT to create and enact a new section to chapter 23-13 of the North Dakota Century Code, relating to smoke detection systems in residential rental property; to amend and reenact section 23-13-04 of the North Dakota Century Code, relating to the construction of doors of public buildings; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 23-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-13-04. Doors of public buildings - Construction. All doors of ingress and egress in all schoolhouses and churches within the limits of any city and in all other buildings used for public assemblages of any character in this state, including theaters, public halls, city halls, courthouses, factories, hotels, and all other public buildings wherein numbers of persons are employed or are in the habit of meeting together for any purpose, shall be so constructed as to open and swing outward. Doorways in such buildings shall not be less than four feet {1.22 meters} in width and shall have proper landings and stairways of at least equal width conform with the requirements of the state building code as provided in chapter 54-21.3.

SECTION 2. A new section to chapter 23-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Smoke detection systems for residential rental property - Penalty. All residential rental property with the exception of property covered by section 23-09-02.1 must be equipped with smoke detection systems or other approved alarm systems for the protection of occupants of the property. Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The state fire marshal and local fire departments shall provide information concerning the installation of smoke detection systems

to owners of residential rental properties. A system installed in a single family rental dwelling must be maintained and inspected by the tenant occupying the single family rental dwelling.

Nothing in this section shall be construed to alter the provisions of chapter 54-21.3 regarding smoke detection systems or alarm systems for newly constructed residences.

Any property owner who willfully fails to install a system as required by this section is guilty of a class B misdemeanor.

Approved March 27, 1985

CHAPTER 295

SENATE BILL NO. 2075
 (Legislative Council)
 (Interim Industry, Business and Labor Committee)

CERTIFICATE OF NEED

AN ACT to amend and reenact subsections 1, 4, 7, 8, 16, and 18 of section 23-17.2-02, subsection 1 of section 23-17.2-03, and subsection 3 of section 23-17.2-04 of the North Dakota Century Code, relating to definitions, thresholds, and scope of coverage of certificate of need review.

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

SECTION 1. AMENDMENT. Subsections 1, 4, 7, 8, 16, and 18 of section 23-17.2-02 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Ambulatory surgical facility" means a facility, licensed pursuant to the North Dakota Administrative Code chapter 33-03-01. ~~The term does not include the offices of private physicians or dentists, whether for individual or group practice.~~
4. "Capital expenditure" means an expenditure of ~~one seven~~ hundred fifty thousand dollars ~~or such greater amount as federal regulations may specify~~, regardless of the financial mechanism utilized, made by or on behalf of a health care facility which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.
7. "Expenditure minimum", when used in connection with annual operating costs, means ~~seventy-five~~ three hundred thousand dollars ~~or such greater amount as federal regulations may specify~~.
8. "Health care facility" means those health care facilities licensed by the department or certified by the department pursuant to the federal Social Security Act as amended and so listed in department ~~regulations~~ rules under North Dakota Administrative Code article 33-09 such as hospitals, skilled nursing facilities, kidney disease

treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities. ~~The term does not include the offices of private physicians or dentists, whether for individual or group practice.~~

16. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical and other health services and which costs more than ~~one~~ five hundred ~~fifty~~ thousand dollars. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. In determining whether medical equipment costs more than ~~one~~ five hundred ~~fifty~~ thousand dollars, the cost of designs, plans, working drawings, specifications, and other activities essential to placement, to acquiring the equipment and making it operational shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.
18. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency as stated herein. ~~This does not include the offices of private physicians or dentists, whether for individual or group practice.~~

SECTION 2. AMENDMENT. Subsection 1 of section 23-17.2-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The department, pursuant to this chapter and rules of the health council, must review proposals subject to this chapter and must approve, disapprove, or revoke the certificate of need, as appropriate. The certificate of need program applies to:
 - a. The obligation by or on behalf of a health care facility of any capital expenditure (other than to acquire an existing facility). The costs of designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment.
 - b. ~~The obligation of any capital expenditure by or on behalf of a health care facility which:~~

- (1) Increases or decreases the total number of beds by ten beds or ten percent, whichever is less in any two-year period;
 - (2) Redistributes beds among various categories by ten beds or ten percent, whichever is less in any two-year period; or
 - (3) Relocates beds from one physical facility or site to another by ten beds or ten percent whichever is less in any two-year period.
- e- The addition of a health care service by or on behalf of a health care facility which was not offered within the previous twelve-month period before the month in which the service would be offered which is associated with either a capital expenditure or entails an annual operating cost of at least seventy-five three hundred thousand dollars; or the termination of a health service which is associated with any capital expenditure.
- d- c. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility.
- e- d. The acquisition by any person of major medical equipment not owned by or located in a health care facility if-
- (1) A notice of intent is not filed at least thirty days before a contract is entered into; or
 - (2) The the department finds, within thirty days after receipt of a notice that the equipment will be used primarily to provide services to inpatients persons who are admitted patients in a health care facility. This does not include use of equipment on other than a temporary basis as in the case of a natural disaster, a major accident, or equipment failure.
- f- e. The obligation of a capital expenditure by any person to acquire an existing health care facility if a notice of intent is not received at least thirty days prior to entering into a contract or the department finds that the services or bed capacity of the facility will be changed.
- g- f. An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if such acquisition would have been subject to review if purchased. An acquisition for less than fair market

value must be reviewed if the acquisition at fair market value would exceed the expenditure minimum.

However, health care facilities and health care services, for the purposes of this chapter, do not include health maintenance organizations, as defined in section 26.1-18-01, when the health maintenance organization, or other entity, is engaged in activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations, or planning projects for the establishment of health maintenance organizations or for the significant expansion of the membership of, or areas served by, health maintenance organizations, or initial development of health maintenance organizations. "Planning projects" and "initial development" mean those activities as defined in the Health Maintenance Organization Act of 1973, as amended [Pub. L. 94-460; 90 Stat. 1948, 1950, 1955; and Pub. L. 95-559; 92 Stat. 2131, 2134; 42 U.S.C. 300 e-3].

SECTION 3. AMENDMENT. Subsection 3 of section 23-17.2-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Subsequent reviews. A proposed change in a project associated with a capital expenditure for which the state health council has previously issued a certificate of need will require review if the change is proposed within one year after the date the activity for which the expenditure was approved is undertaken. ~~(As an illustration, where a hospital receives approval to construct a new wing for its facility, the hospital will "undertake the activity" when it begins to provide services in the wing.)~~ This applies to changes associated with capital expenditures that were subject to review under this chapter. A review is required under this chapter whether or not a capital expenditure is associated with the proposed change. A "change in a project" shall include, at a minimum, any change in the bed capacity of a facility and the addition or termination of a health service.

Approved March 27, 1985

CHAPTER 296

HOUSE BILL NO. 1063
(Legislative Council)
(Interim Industry, Business and Labor Committee)

HOSPICE PROGRAM LICENSING

AN ACT to license hospice programs.

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

SECTION 1. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Bereavement" means the period of time during which the hospice patient's family experiences and adjusts to the death of the hospice patient.
2. "Department" means the state department of health.
3. "Hospice care team" means an interdisciplinary working unit including the hospice patient and the hospice patient's family, the attending physician, the medical director of the hospice program, a registered professional nurse as defined under chapter 43-12.1, a social worker licensed pursuant to chapter 43-41 providing medical social services, and trained hospice volunteers. Providers of special services, including a spiritual counselor, a pharmacist, a registered dietitian, or professionals in the field of mental health may be included on the interdisciplinary team as determined to be appropriate by the hospice program.
4. "Hospice patient" means a person diagnosed as terminally ill with a prognosis of an anticipated life expectancy of six months or less, who has received admission into the hospice program. The diagnosis and prognosis must be certified by the attending physician.
5. "Hospice patient's family" means the immediate kin of the patient, including a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild. Additional relatives or individuals with significant

personal ties to the hospice patient may be included in the hospice patient's family for the purposes of this Act.

6. "Hospice program" means a coordinated program of home and inpatient care providing hospice services directly, or through agreement, using a hospice care team.
7. "Hospice services" means palliative and supportive medical, health, and other care provided to hospice patients and their families to meet the special needs arising out of the physical, emotional, spiritual, and social stresses experienced during the final stages of illness and during dying and bereavement so that when and where possible the hospice patient may remain at home, with homelike inpatient care utilized only if and while it is necessary.
8. "Palliative care" means treatment which is intended to achieve relief from, reduction of, or elimination of pain and other troubling symptoms, rather than treatment aimed at investigation and intervention for the purposes of cure or prolongation of life.
9. "Hospice service plan" means the plan detailing the specific hospice services offered by a hospice program, and the administrative and direct care personnel responsible for those services.
10. "Volunteer services" means the services provided by individuals who have successfully completed a training program developed by a licensed hospice program.

SECTION 2. Hospice program license required. No person may establish, conduct, or maintain a hospice program, or advertise or present itself to the public as a hospice program, without first obtaining a hospice program license from the department.

SECTION 3. Scope of license. A hospice program license is valid only for the premises, person, or facility named in the application for license and is not transferable or assignable. The license must be renewed annually. The license must be displayed in a conspicuous place inside the hospice program office.

SECTION 4. Application for license. An application for issuance or renewal of a hospice program license must be made to the department upon forms provided by the department. The application must contain information reasonably required by the department. The application must be accompanied by:

1. The hospice service plan which must include:
 - a. Identification of the persons administratively responsible for the program, and any affiliation of the persons with a licensed home health agency,

hospital, skilled nursing home, intermediate care facility, or other health care provider.

- b. The estimated average monthly patient census.
 - c. The proposed geographic area the hospice program will serve.
 - d. A listing of hospice services provided directly by the hospice, and hospice services provided indirectly through a contractual agreement.
 - e. The name and qualifications of persons or entities under contract to provide indirect hospice services.
 - f. The name and qualifications of persons providing direct hospice services, with the exception of volunteers.
 - g. A description of how the hospice program plans to use volunteers in the provision of hospice services.
 - h. A description of the hospice program's recordkeeping system.
2. A financial statement containing information determined to be appropriate by the department.
 3. A uniform license fee determined by the department.

SECTION 5. Inspection of hospice program. Prior to the issuance or renewal of a hospice program license, the department shall inspect the hospice program for compliance with the standards established pursuant to this Act. To the maximum extent possible, the department shall coordinate inspections made under this Act with those made for the purposes of determining compliance with other licensing statutes or rules.

SECTION 6. Issuance of license - Renewal. Upon receipt of a completed application for issuance or renewal of a hospice program license, the department shall issue or renew a license if the department finds the applicant in compliance with this Act and the minimum standards established pursuant to this Act.

SECTION 7. Basic requirements for hospice program. A hospice program must comply with the following basic standards:

1. The hospice program's services must include physician services, nursing services, medical social services, counseling, and volunteer services. The services must be coordinated with those of the hospice patient's primary or attending physician.

2. The hospice program must coordinate its services with professional and nonprofessional services already in the community. The hospice program may contract for elements of its services; however, direct patient contact and overall coordination of hospice services must be maintained by the hospice care team. Any contract entered into between a hospice program and a health care facility or service provider must specify that the hospice program retains the responsibility for planning and coordinating hospice services and care on behalf of a hospice patient and the hospice patient's family. No hospice which contracts for any hospice service may charge fees for services provided directly by the hospice care team which duplicate contractual services provided to the individual hospice patient or family.
3. The hospice care team is responsible for the coordination of home and inpatient care.
4. The hospice program must have a medical director who is a physician licensed pursuant to chapter 43-17. The medical director has overall responsibility for medical policy in relation to the care and treatment of hospice patients and their families rendered by the hospice care team, and must consult and cooperate with the hospice patient's attending physician.
5. The hospice program must provide the services of a registered nurse, as defined under chapter 43-12.1, to supervise and coordinate the palliative and supportive care for patients and families provided by the hospice care team.
6. The hospice program must identify a member of the hospice team who will be responsible for providing for coordination and administration of the hospice service plan for patients and families.
7. The hospice program must have a bereavement program to provide a continuum of supportive services for the family.
8. The hospice program must foster independence of the hospice patient and the hospice patient's family by providing training, encouragement, and support so that the patient and family can care for themselves as much as possible.
9. The hospice program may not impose the dictates of any value or belief system on hospice patients or their families.
10. The hospice program must clearly define admission criteria. Decisions on admission must be made by a hospice care team and are dependent upon the expressed

request of the patient; however, if the attending physician certifies that the patient is unable to request admission, a family member may voluntarily request and receive admission of the patient and family on the patient's behalf. Any request for admission must include written evidence of informed consent signed by the person making the request, which contains an explanation, in plain language of the nature and limitations of hospice care.

11. The hospice program must keep accurate, current, and confidential records on all hospice patients and their families. Upon reasonable notice, the records must be made available to duly authorized officers or employees of the department.
12. The hospice program must use the services of trained volunteers.
13. The hospice program must consist of both home care and inpatient care which incorporate the following characteristics:
 - a. The home care component must be the primary form of care, and shall be available on a part-time, intermittent, regularly scheduled basis and on an on-call, around-the-clock basis according to patient and family need.
 - b. The inpatient component may be used only if and while it is necessary. If feasible, inpatient care should closely approximate a homelike environment, and provide overnight family visitation within the facility.

SECTION 8. Rules and standards.

1. The department shall adopt rules establishing minimum standards for hospice programs, including:
 - a. Compliance with the standards of section 7.
 - b. The number and qualifications of persons providing direct hospice services.
 - c. The qualifications of those persons or entities contracted with to provide indirect hospice services.
 - d. Palliative and supportive care and bereavement counseling provided to hospice patients and their families.
 - e. Hospice services provided on an inpatient basis.

- f. Utilization review of hospice patient care.
 - g. The quality of care provided to hospice patients.
 - h. Procedures for the accurate and centralized maintenance of records on hospice services provided to hospice patients and their families.
 - i. The use of volunteers in the hospice program, and the training of those volunteers.
 - j. The rights of the hospice patient and the hospice patient's family.
2. To avoid duplication in rules, the department shall incorporate rules applicable to facilities licensed by the state as hospitals, skilled nursing homes, intermediate care facilities, and organizations licensed by the state as home health agencies which are also applicable to hospice programs in the rules to govern hospices. A person who seeks to license, establish, or operate a hospice program and who has a preexisting valid license to operate a hospital, skilled nursing home, intermediate care facility, or home health agency is in compliance with those rules which are applicable to both a hospice and the facility for which it has a license.

SECTION 9. Inspection and investigation authority. Any duly authorized officer or employee of the department may make necessary inspections and investigations to determine the state of compliance with the provisions of, and rules adopted pursuant to, this Act. The department may inspect any program which the department has reason to believe is offering or advertising itself as a hospice program without a license, but no inspection of any hospice program may be made without the permission of the owner or person in charge unless a warrant is first obtained authorizing inspection. Any application for issuance or renewal of a hospice program license constitutes permission for any inspection of the hospice program for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

SECTION 10. Denial, suspension, or revocation of license. Denial, suspension, or revocation of a hospice program license by the department for noncompliance with this Act is governed by chapter 28-32.

Approved March 22, 1985

CHAPTER 297

HOUSE BILL NO. 1077
(Legislative Council)
(Interim Natural Resources Committee)

DAKOTA INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

AN ACT entering into the Dakota interstate low-level radioactive waste management compact; to designate North Dakota's representatives to the administrative body of the interstate compact; and to provide an appropriation.

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

SECTION 1. Dakota interstate low-level radioactive waste compact. The Dakota interstate low-level radioactive waste compact is hereby entered into with all jurisdictions legally joining the compact, in the form substantially as follows:

ARTICLE I. POLICY AND PURPOSE

There is created the Dakota interstate low-level radioactive waste management compact.

The party states recognize that low-level radioactive wastes are generated by activities and services that benefit the citizens of the states. The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for low-level radioactive waste generated as a result of defense activities of the federal government or federal research and development activities. The party states find that the Congress of the United States by enacting the Low-level Radioactive Waste Policy Act [Public Law 96-573; 94 Stat. 3347; 42 U.S.C. 2021b to 2021d], has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste. It is further recognized and is the policy of the party states that the protection of the health and safety of the citizens of the party states and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is also the policy of party states to this compact to require the reduction of the volume of low-level

radioactive waste requiring disposal within the region. It is the purpose of this compact to provide the means for such a cooperative effort between or among party states so that the protection of the citizens of the states and the maintenance of the viability of the states' environments and economies will be enhanced while sharing the responsibilities of low-level radioactive waste management.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context otherwise requires:

1. "Agreement state" means any state with which the United States nuclear regulatory commission has entered into an effective agreement under section 274(b) of the Atomic Energy Act of 1954, as amended and in effect on January 1, 1985.
2. "Commission" means the Dakota interstate low-level radioactive waste management commission.
3. "Compact" means the Dakota interstate low-level radioactive waste management compact.
4. "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.
5. "Eligible state" means a state qualified to be a party state to this compact as provided in article III.
6. "Facility" means a parcel of land, together with the structures, equipment, and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.
7. "Generator" means any person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity and who is licensed by the United States nuclear regulatory commission or an agreement-status party state to produce or possess such waste. "Generator" does not include a person who provides a service by arranging for the collection, transportation, treatment, storage, or disposal of low-level radioactive waste generated outside the region.
8. "Host state" means a party state in which a regional facility is located or being developed.
9. "Institutional control period" means that period of time in which the facility license is transferred to the site

owner for long-term observation and maintenance following the postclosure period in compliance with appropriate regulations.

10. "Low-level radioactive waste" means radioactive waste that is neither high-level waste nor transuranic waste, nor spent nuclear fuel, nor byproduct material as defined in section 11e (2) of the Atomic Energy Act of 1954, as amended and in effect on January 1, 1985, and is classified by the federal government as low-level waste, consistent with existing law, but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in Pub. L. 96-573, or federal research and development activities.
11. "Operator" means a person who operates a regional facility.
12. "Party state" means any state which is a signatory party to this compact.
13. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision, or agency thereof, and any legal successor, representative agent or agency of the foregoing.
14. "Postclosure period" means that period of time after completion of closure of a disposal site during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site to assure that the disposal site will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.
15. "Region" means the combined geographical area within the boundaries of the party states.
16. "Regional facility" means a facility within any party state.
17. "State" includes the Commonwealth of Puerto Rico and the Virgin Islands.
18. "Storage" means the temporary holding of low-level radioactive waste for treatment or disposal.
19. "Waste management" means the storage, transportation, treatment, or disposal of low-level radioactive waste.

ARTICLE III. GENERAL PROVISIONS

1. North Dakota and South Dakota are eligible to become a party to this compact. Any state not eligible for membership in the compact may petition the commission for

- eligibility. The commission may establish appropriate eligibility requirements. These requirements must include an eligibility fee and designation as a host state. A petitioning state becomes eligible for membership in the compact upon an affirmative majority approval by the commission, including one affirmative vote from each party state. Any state becoming eligible upon approval of the commission becomes a member of the compact in the same manner as any state eligible for membership at the time this compact enters into force.
2. This compact is effective after enactment into law by the legislatures of North Dakota and South Dakota and federal ratification. However, those provisions in article IV relating to the restrictions on importation and exportation of low-level radioactive waste are not effective until Congress has consented to this compact. Ratification of this compact by an eligible state in substantially the same language contained herein and in full agreement with the provisions contained herein is a complete and legally effective ratification.
 3. Congress may withdraw its consent every five years. Failure of Congress to withdraw its consent affirmatively has the effect of renewing consent for an additional five-year period. The consent given to this compact by Congress extends to any future admittance of new party states under this article and to the power to ban the importation and exportation of low-level radioactive waste pursuant to the provisions of this compact.
 4. A party state may withdraw from this compact by enacting a statute repealing its enacting legislation. Unless permitted earlier by unanimous approval of the commission, withdrawal takes effect five years after the governor of the withdrawing state has given notice in writing of withdrawal to the commission and the governor of each party state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of the withdrawal.
 5. A party state that fails to comply with the terms of this compact or fulfill its obligations hereunder may, after notice and hearing, have its privileges suspended or its membership in the compact revoked by the commission. Revocation takes effect one year from the date the party state receives written notice from the commission of its action. The commission may require the party state to pay to the commission, for a period not to exceed five years from the date of notice of revocation, an amount determined by the commission to ensure the continued availability of safe and economical waste management facilities for all remaining party states. Such state shall also pay an amount equal to that which the party

state had contributed to the annual budget of the commission if that party state would have remained a member of the compact. All legal rights established under this compact of any party state which has its membership revoked shall cease upon the effective date of revocation. However, any legal obligations of a party state arising prior to the effective date of revocation do not cease until they have been fulfilled. Written notice of revocation of any state's membership in the compact must be transmitted immediately following the vote of the commission to the governor of the affected party state, all other governors of the party states, and the Congress of the United States.

6. If a party state withdraws from this compact or if its membership is revoked pursuant to this article, that state's representatives to the commission cease to be members when the withdrawal or revocation takes effect.
7. The withdrawal of a party state from this compact under this article or the revocation of a state's membership in this compact under this article does not affect the applicability of this compact to the remaining party states.

ARTICLE IV. THE COMMISSION

1. There is hereby created the Dakota interstate low-level radioactive waste management commission.
2. Each party state shall designate officials of that state as the persons responsible for administration of this compact. The officials so designated shall be known as commissioners. Each party state shall designate two commissioners, except that if a party state becomes a host state for a disposal facility it shall designate three commissioners to serve during the period that its facility is operating. A host state's third commissioner must be designated by the host state as soon as is practicable after the commission has approved the host state's proposal to host a facility under article V. The governor of each party state shall notify the governor of any other party state in writing of the identities of that state's initial commissioners and one alternate for each commissioner, the alternate to act on behalf of the commissioner only in the commissioner's absence. If a commissioner or alternate is replaced after the commission is formed, the governor shall notify the commission of the replacement. Each party state shall determine how and for what term any alternate may be appointed to perform each member's duties.
3. Each commission member is entitled to one vote. Unless otherwise provided, no action of the commission is binding unless a majority of the total membership cast its votes

- in the affirmative. The commission shall elect annually from among its members a chairman and other officers as it deems appropriate. The commission shall adopt and publish policy statements, bylaws, and rules necessary for the performance of its duties and powers under this compact.
4. The commission shall meet at least once a year and shall also meet upon the call of the chairman or upon the call of two or more members. Meetings of the commission may be held in any place within the region reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment must be given with respect to any meeting. All meetings of the commission must be open to the public, except any meeting that deals with sensitive personnel issues or which involves attorney-client communications, to the extent a meeting dealing with sensitive personnel issues or attorney-client communications can be closed by law of the state in which the meeting is held. All commission actions and decisions must be appropriately recorded.
 5. The commission is responsible for the expenses of members of the commission.
 6. The commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Each party state shall equally contribute to the commission budget on an annual basis for administrative costs an amount not to exceed fifty thousand dollars until surcharges collected from users of a facility are sufficient to cover the annual budget of the commission. Any state hosting a facility within the region shall levy a surcharge on each user of the facility, based on each user's low-level radioactive waste volume and characteristics, in an amount sufficient to cover the annual budget of the commission and to reimburse party states for contributions made for defraying the administrative costs of the commission. A host state collecting this surcharge may retain a portion of the amount collected sufficient to cover its administrative costs of collection.
 7. The commission shall keep accurate accounts of all receipts and disbursements. The commission shall engage an independent certified public accountant annually to audit all receipts and disbursements of commission funds and submit an audit report to the commission.
 8. The commission may accept for any of its purposes and functions donations, grants of money, equipment, supplies, materials, and services from any state or the federal government or any subdivision or agency thereof, or interstate agency, or from any person. The nature,

- amount, and condition attendant upon any acceptance pursuant to this subsection together with the identity of the donor, grantor, or lender, must be detailed in commission records.
9. The commission is not responsible for any costs associated with:
 - a. The licensing and construction of any facility;
 - b. The operation of any facility;
 - c. The stabilization and closure of any facility;
 - d. The postclosure observation and maintenance of any facility;
 - e. The extended institutional control and postclosure observation and maintenance of any facility; or
 - f. Transportation of low-level radioactive waste within the region or to a facility outside the region.
 10. The commission may establish committees for the purpose of advising the commission on matters pertaining to the management of low-level radioactive waste.
 11. The commission may employ a staff to carry out its duties and functions. The commission may contract with any person to assist the commission.
 12. The commission is a legal entity separate and distinct from the party states, capable of acting in its own behalf, and is liable for its actions. Liability of the commission does not extend to the party states. Members of the commission and their staff are not personally liable for actions taken by them in their official capacity.
 13. Generators, transporters of low-level radioactive waste, owners of facilities and operators of facilities, are liable for their acts, omission, conduct, or relationships in accordance with all laws relating to those activities. These liabilities continue through the postclosure period and the institutional control period of the regional facility. However, during the institutional control period, such liability is secondary to any fund set aside by the commission or the host state for use during the institutional control period.
 14. The commission has the power to sue. The commission may appear as an intervenor or party in interest before any court of law, federal, state, or local agency, board, or commission that has jurisdiction over the management of

- low-level radioactive wastes. The authority to intervene or otherwise appear may be exercised only after an affirmative majority vote of the commission. In order to represent its views, the commission may arrange for any expert testimony, reports, evidence, or other participation as it deems necessary.
15. The commission may provide a means of compensation for persons injured or property damaged during the institutional control period due to the waste management nature of the regional facility. This voluntary obligation may be met by a special fund, insurance, or other means.
 - a. For purposes of this section, the commission may impose a waste management surcharge to be collected by the operator of the regional facility from all users of the facility; to establish a separate insurance entity, formed by but separate from the commission itself or any party state, and under terms and conditions as it decides and exempt from party state insurance regulation; or to take any other measure to implement the provisions of this section.
 - b. The existence of any fund or other means of compensation does not imply any liability by the commission, the nonhost party state or states, or any of their officials and staff, which are exempted from liability by other provisions of this compact. Claims or suits for compensation must be directed against the fund, the insurance company, or other entity, unless the commission, by rule, directs otherwise.
 16. Any commission fund, insurance, or other means of compensation may also be available for third party relief during the operational and postclosure periods, as the commission may direct, but only to the extent that no other funds, insurance, tort compensation, or other means are available from the host state or other entities, under article V or otherwise. Any commission contribution or fund may not be used for cleanup or restoration of the regional facility and its environs during the operational and postclosure period.
 17. The commission may enter into agreements with any person for the right of access to facilities outside the region for low-level radioactive waste generated within the region. An agreement to export low-level radioactive waste requires an affirmative majority approval by the commission, including an affirmative majority vote by the commissioners of any host state that may be affected.
 18. The commission may authorize siting and establishment of a monitorable depository for exclusive disposal of low-level

radioactive waste generated within the member states. This authority may be exercised only under the provisions outlined in this compact.

19. The commission may authorize a multistate or multicomact low-level radioactive waste disposal site that must remain under the ownership and control of the host state and under the continuing authority of the commission. This authority may be exercised only under the provisions outlined in this compact.
20. The commission may contract with nonparty states, or other interstate compacts on low-level radioactive waste disposal, or generators therein to accept for disposal low-level radioactive waste generated outside the region. These contracts must provide that the nonparty state or other interstate compact agrees to provide right of access to facilities operated by the nonparty state or other interstate compact for low-level radioactive waste generated within the borders of the party states following termination of operations of any low-level radioactive waste disposal facility within the borders of the party states.
21. The commission may examine any necessary financial records of an operator of a regional facility pertaining to any assessment or collection of any charge or surcharge by an operator on behalf of the commission or a host state.
22. The commission shall receive and act on the application of a nonparty state to become an eligible state in accordance with article III.
23. The commission shall submit an annual report to the governors of the party states regarding the activities of the commission.
24. The commission may develop a regional waste management plan to ensure safe and effective transportation, disposal, and management of low-level radioactive waste within the region.
25. Upon request of party states, the commission shall mediate disputes that arise between the party states regarding this compact.
26. Any person or party state aggrieved by a final decision of the commission may obtain judicial review of the decision in the United States district court in the district where the commission maintains its headquarters by filing in that court a petition for review within sixty days after the commission's final decision.

ARTICLE V. HOST STATE RIGHTS AND RESPONSIBILITIES

1. A party state may volunteer to become a host state and the commission may designate that state as a host state upon a majority vote of its members. The governor of a party state so volunteering shall submit that state's proposal to host a facility to the commission for its approval. Neither the commission nor any party state may approve or license a second disposal facility as long as any approved licensed disposal facility is operating within the region.
2. If the commission approves a proposal by a party state to become a host state, that state shall then accept final authority and responsibility, including final approval, of the site and the facility. Final approval must be based on all of the following criteria:
 - a. The capability of the applicant to obtain a license from the applicable authority.
 - b. The economic efficiency of the proposed regional facility, including the total estimated disposal and treatment costs per cubic foot [28.32 liters] of low-level radioactive waste.
 - c. Financial assurances.
 - d. An environmental impact report on the selected site, to be prepared by the United States geological survey pursuant to a contract with that agency or, if no such contract agreement is forthcoming, pursuant to a contract with any other appropriate, equivalent public or private entity having sufficient expertise. The report must meet the requirements of the nuclear regulatory commission's health and safety standards, procedural requirements, and environmental reviews.
 - e. Accessibility to all party states.
 - f. Other criteria as shall be determined by the state to be necessary for the selection of the best low-level radioactive waste disposal applicant, based on the health, safety, and welfare of the citizens in the region and the party states.
3. A host state may not abdicate its proprietary role, but may transfer its operational functions to a separate commercial enterprise.
4. A host state may fulfill the federal requirements necessary to become an agreement state and may acquire and accept ownership of the real property associated with the facility. It is the policy of this compact and must be the policy of the commission to encourage any host state to become an agreement state. Host state involvement with a facility must include the option of either host state

- operation of the facility or private operation of the facility by agreement.
5. A host state shall ensure that any facility within its jurisdiction acquires and maintains all necessary United States nuclear regulatory commission permits and licenses. A host state may regulate and license any facility within its borders. Regulation and licensing may include restrictions on the type and quantity of low-level radioactive waste a facility within its borders may accept.
 6. The host state shall approve or disapprove any fees, charges, or surcharges to be levied by a facility operator or the political subdivision where the facility is located against generators or transporters using the facility.
 7. The host state may examine all records of operators of regional facilities pertaining to operating costs, profits, or assessment or collection of any fee, charge, or surcharge.
 8. A host state shall ensure through enforcement procedures the safe operation, and closure and postclosure observation and maintenance of a facility, and shall ensure institutional control of a facility, including adequate financial assurances by any operator and adequate emergency response procedures. It shall periodically review and report to the commission on the status of the postclosure and institutional control funds and the remaining useful life of the facility.
 9. A host state shall solicit comments from each party state and the commission regarding the siting, operation, financial assurances, closure, postclosure observation and maintenance, and institutional control of a regional facility. A host state shall ensure that all applications for permits and licenses required for development and operation of a regional facility are processed within a reasonable period of time.
 10. The responsibility for ensuring compensation and cleanup during the operational and postclosure periods rests with the host state if appropriate legal action against low-level radioactive waste generators, transporters, or operators associated with the facility provides insufficient funding for such purposes. The host state shall require availability of funds and procedures for compensation of injured persons, including facility employees, and property damage, except any possible claims for diminution of property values, due to the existence and operation of a regional facility, and for cleanup and restoration of the facility and surrounding areas. The host state may satisfy and limit this obligation by

- requiring bonds, insurance, compensation funds, or any other means to be imposed either on the facility operator or assumed by the state itself, or both. This subsection does not alter the liability of any person under applicable state and federal laws or the ability of the host state to use for remedial action under its laws any financial assurance established with respect to the facility.
11. Fees, charges, and surcharges must be imposed equitably by a host state upon all party state users of a regional facility.
 12. This compact does not affect relations or agreements between a host state and a nonparty state or nonparty state users unless a relationship or agreement has a direct effect on a nonhost party state, at which time the commission may approve or disapprove those aspects of the relationship or agreement that directly affect the nonhost party state.
 13. Each party state agrees that decisions regarding low-level radioactive waste management facilities in their region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.
 14. Fees must be reasonable and sufficient to cover all costs related to the development, operation, closure, postclosure observation and maintenance, and institutional control of the regional facility. The host state shall determine a schedule for contributions to the postclosure observation and maintenance and institutional control funds.
 15. A host state may impose a state surcharge per unit of low-level radioactive waste received at any regional facility within its borders. The state surcharge is in addition to the fees charged for waste management. The surcharge must be sufficient to cover all reasonable costs associated with administration and regulation of the facility.
 16. Except as otherwise provided, this subsection does not limit the ability of the host state, or the political subdivision in which the regional facility is situated, to impose surcharges for purposes including, but not limited to, host state and host community compensation and host state and host community development incentives. These surcharges must be reasonable.
 17. A host state may not take action to close any regional facility located within its borders for a period of twenty years or the design life of the facility, whichever is

longer, unless the facility is closed for reasons of public peace, health, safety, or welfare or for emergency purposes under the provisions of this article. The host state may transfer its responsibility for long-term care of a closed site to the United States department of energy pursuant to subtitle D, section 151 of the Nuclear Waste Policy Act of 1982.

18. A host state, through enforcement and appropriate financial arrangements, shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned. A host state, similarly, shall provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured.
19. A host state intending to close a regional facility located within its borders shall notify the commission in writing of its intention and the reasons. Notification must be given to the commission at least five years prior to the intended date of closure. This subsection does not prevent an emergency closing of a regional facility by a host state to protect its air, land, and water resources and the health and safety of its citizens. However, a host state that has an emergency closing of a regional facility shall notify the commission in writing within three working days of its action and shall, within thirty working days of its action, demonstrate justification for the closing.
20. If a regional facility is closed before an additional or new facility becomes operational, low-level radioactive waste generated within the region may be shipped to any location agreed on by the commission until a new regional facility is operational.

ARTICLE VI. PARTY STATES' RIGHTS AND RESPONSIBILITIES

1. No state holding membership in any other regional compact for the management of low-level radioactive waste may become a member of this compact.
2. Until a party state has volunteered to become a host state and the commission and the host state have authorized a low-level radioactive waste disposal facility that accepts low-level radioactive waste from outside the region pursuant to article IV, it is unlawful for any person to import low-level radioactive waste into the region from outside the region except for purposes of transport through the region, which transport shall follow all applicable laws of involved party states.
3. If a party state volunteers to become a host state and a regional facility subsequently becomes operational, it is

unlawful for any person to export from the region low-level radioactive waste that is generated within the region, unless so authorized pursuant to article IV.

4. Facilities located in any party state, other than facilities established or maintained by individual low-level radioactive waste generators for the management of their own low-level radioactive waste, shall accept low-level radioactive waste generated in any party state if the low-level radioactive waste has been packaged and transported according to applicable laws and regulations.
5. All laws and regulations, or parts thereof, of any party state or subdivision or instrumentality thereof which are in conflict with this compact are superseded to the extent of the conflict. However, the provisions of chapter 240 of the 1984 Session Laws of South Dakota may not be construed to be in conflict with any provisions of this compact and may not be superseded by it. Any legal right, obligation, violation, or penalty arising under such laws or regulations prior to the enactment of this compact, or not in conflict with it, is not affected by the provisions of the compact.
6. No party state may enact any law or regulation or attempt to enforce any measure which is inconsistent with this compact. No law or regulation of a party state or subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators or transporters of another party state than for the generators or transporters of the state where the facility is situated.
7. This compact does not prevent onsite disposal of waste by a generator.
8. No law, ordinance, or regulation of any party state or any subdivision or instrumentality thereof may prohibit, suspend, or unreasonably delay, limit, or restrict the operation of a siting or licensing agency in the designation, siting, or licensing of a regional facility. Any such provision in existence at the time of ratification of this compact is superseded.
9. Each party state is responsible for its own enforcement of any applicable federal and state laws and regulations pertaining to the packaging and transportation of low-level radioactive waste generated within or passing through its borders and shall adopt practices that will ensure that low-level radioactive waste shipments originating within its borders and destined for a regional facility conform to applicable packaging and transportation laws and regulations.

10. Any low-level radioactive waste shipment originating within any state and destined for a facility within a host state shall conform to the applicable packaging and transportation requirements and regulations of the host state. These requirements and regulations must include all of the following:
 - a. Maintenance of an inventory of all generators within the state that have shipped or expect to ship low-level radioactive waste to facilities in another party state.
 - b. Periodic unannounced inspection of the premises of generators and the waste management activities thereon.
 - c. Regulation of the containers in which low-level radioactive waste may be shipped and implementation of requirements that generators use only the type of container authorized by the state.
 - d. Assurance that inspections of carriers which transport low-level radioactive waste are conducted by proper authorities and appropriate enforcement action is taken for violations.
 - e. After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, pursuit of appropriate action to assure that such violations do not recur. This action may include inspection of every individual low-level radioactive waste shipment by that generator or a requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility.
11. A party state may impose fees upon generators and transporters to recover the cost of inspections and other practices under this article. This article does not limit any party state's authority to impose additional or more stringent standards on generators or transporters than those required under this article.
12. Once a party state has served as a host state and has decommissioned its facilities under this compact, it may not be expected to serve again as host state until every party state has served. Nothing in this compact prevents a party state that has served as a host state from volunteering to host a new facility.

ARTICLE VII. ADDITIONAL PROVISIONS

1. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared by a court to be contrary to the constitution of

any participating state or of the United States or its applicability to any person or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any person or circumstance is not affected thereby. If any provision of this compact is held contrary to the constitution of any state participating therein, the compact remains in full force and effect as to the state affected as to all severable matters.

2. Nothing in this compact abrogates or limits the applicability of any Act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by Congress.
3. Nothing in this compact abrogates or limits the regulatory responsibility or authority of the United States nuclear regulatory commission or of an agreement state under section 274 of the Atomic Energy Act of 1954, as amended and in effect on January 1, 1985.

SECTION 2. State commission members. The governor shall appoint the state health officer and one other person in the governor's discretion as this state's representatives on the Dakota interstate low-level radioactive waste management commission. The state members of this commission may designate alternates to act on their behalf. The term of the member appointed by the governor is two years.

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 \$50,000, or so much thereof as may be necessary, to the state department of health for the purpose of paying the state's share of the administrative expenses of the Dakota interstate low-level radioactive waste management commission for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 4, 1985

CHAPTER 298

HOUSE BILL NO. 1078
(Legislative Council)
(Interim Natural Resources Committee)

ROCKY MOUNTAIN INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE

AN ACT to enter into the Rocky Mountain interstate compact on low-level radioactive waste; to designate North Dakota's member of the administrative board under this compact; and to provide a contingent effective date.

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

SECTION 1. Rocky Mountain interstate compact on low-level radioactive waste. The Rocky Mountain interstate compact on low-level radioactive waste is hereby entered into with all jurisdictions legally joining the compact, in the form substantially as follows:

ARTICLE I. FINDINGS AND PURPOSE

1. The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for low-level radioactive waste generated as a result of defense activities of the federal government or federal research and development activities. Moreover, the party states find that the Congress of the United States, by enacting the "Low-level Radioactive Waste Policy Act" [Pub. L. 96-573], has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.
2. It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits, and obligations of low-

level radioactive waste management equitably among the party states; and by these means to promote the health, safety, and welfare of the residents within the region.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise:

1. "Board" means the Rocky Mountain low-level radioactive waste board.
2. "Carrier" means a person who transports low-level radioactive waste.
3. "Disposal" means the isolation of low-level radioactive waste from the biosphere, with no intention of retrieval, such as by land burial.
4. "Facility" means any property, equipment, or structure used or to be used for the management of low-level radioactive waste.
5. "Generate" means to produce low-level radioactive waste.
6. "Host state" means a party state in which a regional facility is located or being developed.
7. "Low-level radioactive waste" means radioactive waste, other than:
 - a. Waste generated as a result of defense activities of the federal government or federal research and development activities;
 - b. High-level radioactive waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;
 - c. Waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material;
 - d. Byproduct material as defined in Section 11 e. (2) of the "Atomic Energy Act of 1954", as amended on November 8, 1978; or
 - e. Wastes from mining, milling, smelting, or similar processing of ores and mineral-bearing material primarily for minerals other than radium.
8. "Management" means collection, consolidation, storage, treatment, incineration, or disposal.

9. "Operator" means a person who operates a regional facility.
10. "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.
11. "Region" means the combined geographical area within the boundaries of the party states.
12. "Regional facility" means a facility within any party state which:
 - a. Has been approved as a regional facility by the board; or
 - b. Is the low-level radioactive waste facility in existence on January 1, 1982, at Beatty, Nevada.

ARTICLE III. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS

1. There must be regional facilities sufficient to manage the low-level radioactive waste generated within the region. At least one regional facility must be open and operating in a party state other than Nevada within six years after this compact becomes law in Nevada and in one other state.
2. Low-level radioactive waste generated within the region must be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.
3. Each party state which, according to reasonable projections made by the board, is expected to generate twenty percent or more in cubic feet, except as otherwise determined by the board, of the low-level radioactive waste generated within the region has an obligation to become a host state in compliance with subsection 4 of this article.
4. A host state, or a party state seeking to fulfill its obligation to become a host state, shall:
 - a. Cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in article IV before allowing site preparation or physical construction to begin;
 - b. Ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning, and long-term care of the regional facilities within the state;

- c. Subject to the approval of the board, ensure that charges for management of low-level radioactive waste at the regional facilities within the state are reasonable;
 - d. Solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning, and long-term care of the regional facilities within the state and respond in writing to such comments;
 - e. Submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together with other information required by the board; and
 - f. Notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.
5. Once a party state has served as a host state, it is not obligated to serve again until each other party state having an obligation under subsection 3 of this article has fulfilled that obligation. Nevada, already being a host state, is not obligated to serve again as a host state until every other party state has so served.
6. Each party state:
- a. Agrees to adopt and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. These procedures include:
 - (1) Periodic inspections of packaging and shipping practices.
 - (2) Periodic inspections of low-level radioactive waste containers while in the custody of carriers.
 - (3) Appropriate enforcement actions with respect to violations.
 - b. Agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping, or transporting requirements or regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate

action may include the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected.

- c. May impose fees to recover the cost of the practices provided for in subdivisions a and b of this subsection.
- d. Shall maintain an inventory of all generators within the state that may have low-level radioactive waste to be managed at a regional facility.
- e. May impose requirements or regulations more stringent than those required by this subsection.

ARTICLE IV. BOARD APPROVAL OF REGIONAL FACILITIES

1. Within ninety days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.
2. The board may approve a regional facility only if the board determines that:
 - a. There will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and
 - b. The facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

ARTICLE V. SURCHARGES

1. The board shall impose a "compact surcharge" per unit of low-level radioactive waste received at any regional facility. The surcharge must be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.
2. A host state may impose a "state surcharge" per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including costs of licensure and regulatory activities related to the regional facility, reserves for decommissioning and long-term care of the regional facility, and local impact assistance.

ARTICLE VI. THE BOARD

1. The Rocky Mountain low-level radioactive waste board, which is not an agency or instrumentality of any party state, is created.
2. The board consists of one member from each party state. Each party state shall determine how and for what term its member is appointed, and how and for what term any alternate may be appointed to perform that member's duties on the board in the member's absence.
3. Each party state is entitled to one vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.
4. The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment must be given with respect to any meeting; provided, however, that nothing in this subsection precludes the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline, or termination of any of its employees.
5. The board shall pay necessary travel and reasonable per diem expenses of its members, alternates, and advisory committee members.
6. The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone must be confirmed in writing by each member within thirty days. Any action taken by telephone must be noted in the minutes of the board.
7. The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.
8. The board may establish its offices in space provided for that purpose by any of the party states or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

9. Consistent with available funds, the board may contract for necessary personnel services and may employ staff necessary to carry out its duties. Staff must be employed without regard for the personnel, civil service, or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.
10. The board shall establish a fiscal year that conforms to the extent practicable to the fiscal years of the party states.
11. The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board must be conducted by an independent certified public accountant, and the audit report must be made a part of the annual report of the board.
12. The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.
13. Upon legislative enactment of this compact, each party state shall appropriate seventy thousand dollars to the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to subsection 1 of article V of this compact.
14. The board may accept any donations, grants, equipment, supplies, materials, or services, conditional or otherwise, from any source. The nature, amount, and condition, if any, attendant upon any donation, grant, or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, must be detailed in the annual report of the board.
15. In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:
 - a. Shall submit communications to the governors and to the presiding officers of the legislative assemblies of the party states regarding the activities of the board, including an annual report to be submitted by December fifteenth.
 - b. May assemble and make available to the governments of the party states and to the public through its members information concerning low-level radioactive waste management needs, technologies, and problems.
 - c. Shall keep a current inventory of all generators within the region, based upon information provided by the party states.

- d. Shall keep a current inventory of all regional facilities, including information on the size, capacity, and location of specific low-level radioactive wastes capable of being managed and the projected useful life of each regional facility.
 - e. May keep a current inventory of all low-level radioactive waste facilities in the region, based upon information provided by the party states.
 - f. Shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level radioactive waste.
 - g. May develop a regional low-level radioactive waste management plan.
 - h. May establish such advisory committees as it determines necessary for the purpose of advising the board on matters pertaining to the management of low-level radioactive waste.
 - i. May contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state.
 - j. Shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level radioactive waste transportation or management.
 - k. Shall prepare contingency plans, with the cooperation and approval of the host state, for management of low-level radioactive waste in the event any regional facility should be closed.
 - l. May examine all records of operators of regional facilities pertaining to operating costs, profits, or the assessment or collection of any charge, fee, or surcharge.
 - m. Shall have the power to sue.
 - n. When authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level radioactive waste.
- ARTICLE VII. PROHIBITED ACTS AND PENALTIES
1. It is unlawful for any person to dispose of low-level radioactive waste within the region, except at a regional facility; provided, however, that a generator who, prior

- to January 1, 1982, had been disposing of only the generator's own waste on the generator's own property may, subject to applicable federal and state law, continue to do so.
2. After January 1, 1986, it is unlawful for any person to export low-level radioactive waste, which was generated within the region, outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board include:
 - a. The economic impact of the export of the low-level radioactive waste on the regional facilities;
 - b. The economic impact on the generator of refusing to permit the export of the low-level radioactive waste; and
 - c. The availability of a regional facility appropriate for the disposal of the low-level radioactive waste involved.
 3. After January 1, 1986, it is unlawful for any person to manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region or unless authorized to do so both by the board and by the state in which the management takes place. In determining whether to grant authorization, the factors to be considered by the board include:
 - a. The impact of importing low-level radioactive waste on the available capacity and projected life of the regional facilities;
 - b. The economic impact on the regional facilities; and
 - c. The availability of a regional facility appropriate for the disposal of the type of low-level radioactive waste involved.
 4. It is unlawful for any person to manage at a regional facility any radioactive waste other than low-level radioactive waste, unless authorized to do so both by the board and the host state. In determining whether to grant the authorization, the factors to be considered by the board include:
 - a. The impact of allowing such management on the available capacity and projected life of the regional facilities;

- b. The availability of a facility appropriate for the disposal of the type of low-level radioactive waste involved;
 - c. The existence of transuranic elements in the low-level radioactive waste; and
 - d. The economic impact on the regional facilities.
5. Any person who violates subsection 1 or 2 of this article is liable to the board for a civil penalty not to exceed ten times the charges that would have been charged for disposal of the low-level radioactive waste at a regional facility.
 6. Any person who violates subsection 3 or 4 of this article is liable to the board for a civil penalty not to exceed ten times the charges that were charged for management of the low-level radioactive waste at a regional facility.
 7. The civil penalties provided for in subsections 5 and 6 of this article may be enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.
 8. Out of any civil penalty collected for a violation of subsection 1 or 2 of this article, the board shall pay to the appropriate operator a sum sufficient in the judgment of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.
 9. Any civil penalty collected for a violation of subsection 3 or 4 of this article must be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.
 10. Violations of subsection 1, 2, 3, or 4 of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by

the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

11. No state attorney general is required to bring any proceeding under any subsection of this article, except upon that person's consent.

ARTICLE VIII. ELIGIBILITY, ENTRY INTO EFFECT,
CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

1. Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.
2. An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor adopting this compact; provided, however, a state becoming a party by executive order ceases to be a party state upon adjournment of the first general session of its legislative assembly convened thereafter, unless before adjournment the legislative assembly has enacted this compact.
3. This compact is effective when it has been enacted by the legislative assemblies of two eligible states in substantially similar form. However, subsections 2 and 3 of article VII are not effective until Congress has by law consented to this compact. Every five years after consent has been given, Congress may by law withdraw its consent.
4. A state that has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but no repeal is effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state must remain available to receive low-level radioactive waste generated within the region until five years after the effective date of the withdrawal; provided, however, this provision does not apply to the existing facility in Beatty, Nevada.
5. A party state may be excluded from this compact by a two-thirds vote of the members representing the other party states, acting in a meeting, on the ground that the state to be excluded has failed to carry out its obligations under this compact. An exclusion may be terminated upon a two-thirds vote of the members acting in a meeting.

ARTICLE IX. CONSTRUCTION AND SEVERABILITY

1. The provisions of this compact must be broadly construed to carry out the purposes of this compact.

2. Nothing in this compact affects any judicial proceeding pending on the effective date of this compact.
3. If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, is not affected.

SECTION 2. State board member. The state health officer is this state's member of the board. The state health officer may designate an alternate from the state department of health to act on the state health officer's behalf.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1987, unless the state of South Dakota, pursuant to chapter 240, 1984 Session Laws of South Dakota, has ratified and approved the Dakota interstate low-level radioactive waste compact as created by, and in substantially form and substance as, House Bill No. 1077 as enacted by the forty-ninth legislative assembly of North Dakota, in which event this Act does not become effective.

Approved March 29, 1985

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 299

HOUSE BILL NO. 1109
(Committee on Transportation)
(At the request of the Secretary of State)

MAPS OF HIGHWAYS, ROADS, AND STREETS

AN ACT to amend and reenact section 24-01-07 of the North Dakota Century Code, relating to maps of state, county, and municipal highway, road, and street systems.

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

SECTION 1. AMENDMENT. Section 24-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-01-07. Maps of state, county and municipal systems. The department at all times shall provide and maintain a map of the state, which shall show all the highways which have been designated, located, created, and constituted as part of the state highway system, the county road system, and the municipal arterial street system, and if practical the status of improvement thereof. ~~Not later than the fifteenth day of January of each odd-numbered year, it shall file a copy of such map in the office of the secretary of state and deposit another copy thereof with the state historical board-~~

Approved February 22, 1985

CHAPTER 300

SENATE BILL NO. 2280
(Lips)HIGHWAY COMMISSIONER RECORDS
CONFIDENTIALITY

AN ACT to amend and reenact section 24-02-11 of the North Dakota Century Code, relating to confidentiality of certain records of the highway commissioner.

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

SECTION 1. AMENDMENT. Section 24-02-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-11. Records of department open to public - Certain records not open to public - Certified copies. The commissioner shall be custodian of, and shall preserve, the files and records of the department. The files and records of the department shall be open to public inspection under reasonable regulations. However, records relating to the financial condition of any party that has applied for prequalification as a bidder, or is designated as a prequalified bidder pursuant to this chapter are not open to public inspection. Copies of said files and records of the department, when certified by the commissioner as being true copies, shall be received in evidence in any court in the state with the same force and effect as the originals.

The books of account of the department shall be kept accurately and completely as shall be prescribed or approved by the state auditor, which shall show among other things the following facts:

1. The cost of maintaining the department, including the salaries and expenses of the individual members thereof.
2. The amounts of money expended for the construction or maintenance of the state highways, when and where, and upon what job or portion of the road expended, so that the cost per mile [1.61 kilometers] of such construction or maintenance can be ascertained with ease.
3. The amount of road equipment and materials purchased and when and where and from whom purchased. Such book also shall show the price paid for each item. The original invoice or a photographic copy thereof shall form a part of the permanent files and records in said department.

Approved March 22, 1985

CHAPTER 301

HOUSE BILL NO. 1187
(Committee on Transportation)
(At the request of the Highway Department)

HIGHWAY DEPARTMENT CONTRACT PAYMENT

AN ACT to amend and reenact section 24-02-13 of the North Dakota Century Code, relating to highway department estimates for payment.

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

SECTION 1. AMENDMENT. Section 24-02-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-13. Payment of estimates on contract or deposits in condemnation. Whenever any estimate or allowance for payment, except a final estimate or payment subsequent to a final estimate, is allowed, or granted, on a contract entered into by the department, or a deposit is to be made with the clerk of district court in a condemnation proceeding, and the same estimate is vouchered by the department for presentation to the department of accounts and purchases office of management and budget, instead of submitting the same estimate to the contractor or clerk of district court for certification by him, the chief engineer of said the department or the chief engineer's authorized designee shall make the following certificate, in lieu of the certificate otherwise required by law, which shall be printed on the said voucher or claim:

Estimate certificate. I hereby certify that the within estimate or claim is just and true, that the contractor herein named has rendered the services and furnished the material herein charged, that they are of the value claimed, that no part thereof has been paid, and that the foregoing estimate or claim is supported by a proper contract and bond on file in the department or that the purpose of the payment to a clerk of district court is pursuant to law and for the taking of property by condemnation.

Chief Engineer, State Highway Department

After a certified estimate or deposit with a clerk of district court has been approved for payment by the commissioner, the same shall be

presented to the department of accounts and purchases office of management and budget for payment. The department of accounts and purchases office of management and budget thereupon shall prepare and issue a warrant therefor signed by the state auditor without submitting such the voucher or claim to the office of the budget for examination and allowance. The foregoing procedure shall not apply to the final estimate or allowance to a contractor, nor to any estimate or allowance subsequent or supplemental to such the final estimate, but such the final estimate or supplemental allowance, shall conform to the provisions of law relative to the certification and approval of any other claim or demand; nor shall such the procedure apply to payments to property owners involved in the taking of property in any condemnation proceeding.

Approved March 14, 1985

CHAPTER 302

HOUSE BILL NO. 1138
(Committee on Transportation)
(At the request of the Highway Department)

ADVERTISING FOR BIDS BY HIGHWAY COMMISSIONER

AN ACT to amend and reenact sections 24-02-17, 24-02-18, 24-02-19, and 24-02-23 of the North Dakota Century Code, relating to the award of contracts by the highway commissioner and when advertising for bids is necessary.

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

SECTION 1. AMENDMENT. Section 24-02-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-17. Contracts - Bids. Whenever the cost of any construction improvement shall exceed the sum of five thousand dollars, the department shall proceed to advertise the same, request bids, and award such contracts in the manner provided in this chapter. ~~Whenever any proposed contract or work of the department shall be for a sum less than five thousand dollars, it shall be discretionary with the department whether the same shall be awarded after advertising for bids. The department shall award such contracts in the manner provided in this chapter, but where contracts are in excess of three thousand dollars, the department shall request bids from as many contractors, manufacturers, and dealers as can be requested conveniently.~~

SECTION 2. AMENDMENT. Section 24-02-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-18. Reconstruction work without letting contract. The department may, in any case where, in the opinion of the commissioner, the public interest and the preservation of the state highways from deterioration requires it, do the work necessary for minor grading reconstruction on any ~~established secondary~~ state highway without letting a contract for such reconstruction work, or the commissioner may, in his discretion, contract with the county in which any such reconstruction project is located, to perform such reconstruction work on a cost basis. Any such reconstruction projects may include any project that is eligible for federal aid.

Any funds available for highway reconstruction purposes may be expended in carrying out the provisions of this section.

SECTION 3. AMENDMENT. Section 24-02-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-19. Request for bids - How advertised. Any request for bids for construction work or the improvement of any state highway, or any structure in excess of ~~two thousand dollars~~ the amount specified in section 24-02-17, shall be advertised by publication once a week for a period of ~~two~~ three successive weeks, prior to the opening of such bids, in the official newspaper of the county in which the project is located. Such advertisement 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 in excess of the sum of two thousand dollars shall be advertised in the official newspaper of Burleigh County once a week for a period of two successive weeks prior to the opening of such bids.

SECTION 4. AMENDMENT. Section 24-02-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-23. Award of contracts - Bonds. Each and every contract in excess of the sum of ~~five thousand dollars~~ specified in section 24-02-17 shall be awarded by the department to the responsible bidder submitting the lowest and best bid, but said department may reject all bids. If no satisfactory bid or bids shall be received, new bids may be called for. The successful bidder shall be required to furnish a suitable bond in at least the amount of the contract and with such surety as may be determined by the department and as shall be approved by it.

Approved February 4, 1985

CHAPTER 303

HOUSE BILL NO. 1137
(Committee on Transportation)
(At the request of the Highway Department)

CLAIMS ON HIGHWAY DEPARTMENT CONSTRUCTION PROJECTS

AN ACT to amend and reenact section 24-02-25.1 of the North Dakota Century Code, relating to claims on state highway department construction projects.

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

SECTION 1. AMENDMENT. Section 24-02-25.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-25.1. Claims against project - Notice of claim - When filed - Where filed. Any person who has furnished labor, materials, or supplies on a contract awarded under section 24-02-23, and who has not been paid in full at the time of final acceptance of the project by the department, shall have the right to file a claim against the contractor and the surety furnishing the performance bond.

Notice of the claim shall be given, in writing, to the contractor or the surety furnishing the performance bond and must provide a clear and concise statement of the labor, materials, and supplies furnished, to whom it was furnished, and the monetary value thereof. The notice of the claim shall be made by registered certified mail postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or has a residence and posted within ninety one hundred eighty days from the date on which the person completed the contribution giving rise to the claim.

Approved March 14, 1985

CHAPTER 304

HOUSE BILL NO. 1141
(Committee on Transportation)
(At the request of the State Highway Department)

HIGHWAY DEPARTMENT SCHOLARSHIPS

AN ACT to amend and reenact section 24-02-42 of the North Dakota Century Code, relating to highway department scholarships.

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

SECTION 1. AMENDMENT. Section 24-02-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-42. Engineering and technician scholarships authorized. The commissioner is hereby authorized to establish not over sixteen continuing scholarships 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 in any year exceeding eight hundred dollars nor a total exceeding twenty-four hundred dollars and an executed contract of employment shall be a prerequisite. Before any student shall receive the benefits authorized by this section he 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 received scholarship benefits, the salary to be in the amount equalling current salaries paid to civil engineering graduates 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 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 in ~~civil~~ **engineering**, 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 in scholarship benefits under the contract herein provided, such repayment to be made within a period equal to the time he 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 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.

Approved February 22, 1985

CHAPTER 305

HOUSE BILL NO. 1233
(Murphy, Whalen, O. Hanson, Thompson)

COUNTY ROAD MACHINERY BIDS

AN ACT to amend and reenact section 24-05-04 of the North Dakota Century Code, relating to value of county contracts for use of road machinery for which competitive bidding is required.

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

SECTION 1. AMENDMENT. Section 24-05-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-05-04. Contracts to be advertised - Requirements for rental contracts. All purchases of county road machinery and all rental contracts or agreements for the use of road machinery and other articles or contracts for the improvement of the highways, except necessary repairs for such road machinery, which shall exceed the sum of ~~ten~~ fifteen thousand dollars, shall be advertised in the manner provided by law for the purchase of county supplies. The board of county commissioners shall not enter into a rental contract or agreement for the use of road machinery and other articles for a longer period than twelve months from the date of such rental contract or agree to pay rental for the use of road machinery and other articles which would result in the lessor receiving rental at a rate in excess of twenty per centum per annum of the cash sale price thereof, which cash sale price of such road machinery and other articles shall be clearly set forth in all such rental contracts, and failure to include such data in any rental contract for the use of road machinery and other articles shall render any such rental contract null and void, and any payments made thereunder shall be recoverable from the county commissioners making such contract jointly and severally. Notwithstanding the provisions of this section relating to the duration of rental contracts, the board of county commissioners may enter into lease-purchase agreements for the road machinery and articles covered by this section, if those agreements provide for the complete performance and full payment of the purchase price of the machinery or articles within five years from the date of the execution of the lease-purchase agreement according to the provisions of section 44-08-01.1.

Approved April 4, 1985

CHAPTER 306

HOUSE BILL NO. 1263
(R. Anderson)

CATTLE GUARD MAINTENANCE

AN ACT to amend and reenact sections 24-10-02 and 24-10-07 of the North Dakota Century Code, relating to maintenance of cattle guards and cattle ways.

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

SECTION 1. AMENDMENT. Section 24-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-10-02. Cattle guards --~~How constructed~~ - Construction - Maintenance - Effect. Before any cattle guard and gateway shall be erected across any highway or section line as authorized in section 24-10-01, the board of county commissioners or board of township supervisors, as the case may be, shall approve written specifications of the cattle guard and gateway. Specifications approved by the board of county commissioners shall be filed with the county auditor and specifications approved by the board of township supervisors shall be filed with the township clerk. The specifications shall include requirements for warning signs to be placed approximately three hundred feet [91.44 meters] from and plainly visible to persons approaching the cattle guard upon the highway or section line. A cattle guard shall be so constructed as to permit the passage of motor vehicles through and over the same. No cattle guard shall be erected upon any highway or section line unless there also is provided adjacent thereto an ample gateway in which shall be erected a gate which may be opened easily and closed by the public. The person who applied for permission to erect the cattle guard shall maintain the cattle guard and gateway, unless application is otherwise assigned. Within the limits of an enclosure so completed by authorized cattle guards erected in accordance with such specifications, livestock shall be permitted to run at large without liability for being upon the highway or section line.

SECTION 2. AMENDMENT. Section 24-10-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-10-07. Failure to keep cattle way in repair. If the person on whose land a cattle way is constructed fails to keep the same cattle way in repair, the overseer of highways shall make all necessary repairs, and shall charge the same expenses to the owner of the land upon which such way is constructed person who requested the way be constructed or to that person's assignee. Upon his refusal by that person to pay, the county or township board in which such the cattle way is situated shall recover the same expenses in an action brought in the name of such the county or township and the state's attorney shall prosecute such the action. Such The money, when collected, shall be expended in improving or repairing the public roads in the road district where such the cattle way is constructed.

Approved March 22, 1985

MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND AND DEAF

CHAPTER 307

HOUSE BILL NO. 1503
(Tollefson)

LICENSED PHYSICIANS AT STATE INSTITUTIONS

AN ACT to create and enact a new subsection to section 25-01-05 of the North Dakota Century Code, relating to general powers and duties of institution superintendents; and to provide an effective date.

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

SECTION 1. A new subsection to section 25-01-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Employ only licensed physicians as members of the institutional physician staff.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1987.

Approved March 27, 1985

CHAPTER 308

HOUSE BILL NO. 1446
(DeMers, Sauter)

COMMITMENT PROCEEDINGS

AN ACT to amend and reenact subsections 6, 7, and 9 of section 25-03.1-02 of the North Dakota Century Code, relating to independent expert examiners and mental health professionals for commitment proceedings.

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

SECTION 1. AMENDMENT. Subsections 6, 7, and 9 of section 25-03.1-02 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. "Expert examiner" means a licensed physician, psychiatrist, ~~or~~ clinical psychologist, or master addiction counselor appointed by the court to examine the respondent. An evaluation of a respondent's physical condition shall be made only by a licensed physician or psychiatrist, while an evaluation of a respondent's mental status shall be made only by a licensed psychiatrist or clinical psychologist, and an examination by a master addiction counselor shall be limited to whether the respondent is an alcoholic or drug addict.
7. "Independent expert examiner" means a licensed physician, psychiatrist, ~~or~~ clinical psychologist, or master addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent meets the criteria of a person requiring treatment. An examination by a master addiction counselor shall be limited to whether the respondent is an alcoholic or drug addict, and whether the respondent is a person requiring treatment.
9. "Mental health professional" means:
 - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.

- b. A social worker with a master's degree in social work from an accredited program.
- c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
- d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c or an expert examiner as defined by subsection 6.
- e. An addiction counselor certified by the department of human services.

Approved April 15, 1985

CHAPTER 309

HOUSE BILL NO. 1289
(Schneider, Kretschmar)

VENUE OF EMERGENCY COMMITMENT PROCEEDINGS

AN ACT to amend and reenact subsection 1 of section 25-03.1-26 of the North Dakota Century Code, relating to venue for emergency commitment proceedings.

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

SECTION 1. AMENDMENT. Subsection 1 of section 25-03.1-26 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state hospital or public treatment facility must immediately accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if he finds that the subject does not meet the emergency commitment standards, or file a petition if one has not been filed with the magistrate of the county of the person's residence, or to the county of the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

Approved March 22, 1985

CHAPTER 310

HOUSE BILL NO. 1209
 (Committee on State and Federal Government)
 (At the request of the Director of Institutions)

GRAFTON STATE SCHOOL NAME CHANGE

AN ACT to change the name of the Grafton state school to the state developmental center at Grafton; to amend and reenact section 25-04-01 of the North Dakota Century Code, relating to changing the name of the Grafton state school to the state developmental center at Grafton; and to provide an effective date.

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

* SECTION 1. AMENDMENT. Section 25-04-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-01. State ~~school~~ developmental center - Maintained - Name. An institution for the mentally deficient shall be maintained at or near the city of Grafton in the county of Walsh. Such institution shall be known and designated as Grafton state school ~~the state developmental center at Grafton~~. There shall be maintained near Dunseith, in the county of Rolette, a division of the Grafton state ~~school~~ state developmental center at Grafton which shall be known as San Haven.

SECTION 2. Grafton state school renamed state developmental center at Grafton. Whenever the terms "Grafton state school", "state school at Grafton", or "state school" when referring to the state school at Grafton, appear in this code, the term "state developmental center at Grafton" or "state developmental center", as the case may be, shall be substituted therefor.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1989.

Approved March 1, 1985

* NOTE: Section 25-04-01 was also amended by section 1 of House Bill No. 1062, chapter 311.

CHAPTER 311

HOUSE BILL NO. 1062
(Legislative Council)
(Interim Government Reorganization Committee)

GRAFTON STATE SCHOOL AND SAN HAVEN CONTROL TO DEPARTMENT OF HUMAN SERVICES

AN ACT to amend and reenact sections 25-04-01, 25-04-02, 25-04-03, 25-04-03.1, 25-04-04, 25-04-05, 25-04-05.1, 25-04-08, 25-04-11, 25-09-02, 50-06-01.4, and 54-23-01 of the North Dakota Century Code, relating to the transfer of control of Grafton state school and San Haven to the department of human services; and to provide an effective date.

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

* SECTION 1. AMENDMENT. Section 25-04-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-01. State school - Maintained-- Name - Administration and control. An institution for the mentally deficient developmentally disabled shall be maintained at or near the city of Grafton in the county of Walsh. Such The institution shall be known and designated as Grafton state school. There shall be maintained near Dunseith, in the county of Rolette, a division of the Grafton state school which shall be known as San Haven. The department of human services shall have administrative authority and control of Grafton state school and San Haven.

SECTION 2. AMENDMENT. Section 25-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-02. Purpose of state school. The state school shall be maintained for the relief, instruction, care, and custody of the mentally deficient developmentally disabled of this state. For this purpose the ~~direeter~~ department of human services may introduce and establish such trades and manual industries as in ~~his~~ its judgment will best prepare the residents for future self-support.

SECTION 3. AMENDMENT. Section 25-04-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 25-04-01 was also amended by section 1 of House Bill No. 1209, chapter 310.

25-04-03. **Qualifications of superintendent.** The superintendent of Grafton state school shall be a skilled administrator with professional training and experience relating to the needs of the mentally retarded developmentally disabled. The superintendent shall designate a qualified and duly licensed physician as chief of medical staff and such chief of staff shall have the power, with advice and consent of the superintendent, to employ and discharge additional physicians, nurses, and professional assistants and shall be responsible for defining their qualifications and duties. All other employees shall be appointed and removed by the superintendent or a personnel director to be named by him. The salaries of all employees shall be fixed by the superintendent or the personnel director within the limits of the legislative appropriations made for such purpose. The superintendent of the Grafton state school shall also serve as the superintendent of San Haven. The superintendent shall appoint an assistant superintendent who shall be the chief administrative officer of San Haven. The superintendent shall designate a qualified and duly licensed physician as chief of medical staff who will with the advice and consent of the superintendent employ the necessary physicians. All other employees shall be appointed by the assistant superintendent with the advice and consent of the superintendent. The assistant superintendent shall make certain that records on each resident be maintained as required by the director of institutions department of human services and the superintendent. The assistant superintendent, with the advice and consent of the superintendent and the director of institutions department of human services, shall determine the salaries of all employees at San Haven within the limits of legislative appropriations.

SECTION 4. AMENDMENT. Section 25-04-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-03.1. **Biennial report - Assistant superintendent.** The assistant superintendent of San Haven shall submit to the superintendent a biennial report including the number and type of resident residents being served and the conditions and needs of the institution and any other information which the director of institutions department of human services may require. The superintendent upon his review of the report will submit it to the director of institutions who shall include it department of human services for inclusion in his its required biennial report. The director department of human services may authorize the printing of copies of the separate report of such institution not exceeding one thousand in number. The charges for the printing of such the separate copies shall be paid in the same manner as payment is made for printing reports of the various departments of the state.

SECTION 5. AMENDMENT. Section 25-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-04. **Who may receive benefits of state school.** Subject to the provisions of chapter 25-09 and to such any rules and regulations as

may be made adopted by the direector department of human services, the benefits of the state school may be received by persons who are residents of this state and who are:

1. Mentally defieient Developmentally disabled and, in the opinion of the superintendent of the state school, are of suitable age and capacity to receive instruction in such school and whose deficiencies prevent them from receiving proper training and instruction in the public schools; or
2. Mentally defieient Developmentally disabled, and who cannot be properly cared for in their homes or other available facilities.

SECTION 6. AMENDMENT. Section 25-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 mentally defieient developmentally disabled person who is a resident of this state to the state school or other state facility under his the superintendent's jurisdiction or the jurisdiction of the direector of institutions department of human services when all of the following conditions have been met:
 - a. Application for admission has been made on behalf of the mentally defieient developmentally disabled person by his a parent or guardian or the person or agency having legal custody of him, or by the mentally defieient developmentally disabled person himself, in accordance with procedures established by the direector of institutions 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 direector of institutions department of human services may require, indicates to his the superintendent's satisfaction that the person is eligible for admission to the state school 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 direector of institutions department of human services.

2. The superintendent may admit to the state school or any other state facility under ~~his~~ the superintendent's jurisdiction or the jurisdiction of the ~~director of institutions~~ department of human services, temporarily for the purposes of observation, without commitment, under ~~such rules and regulations~~ as the ~~director of institutions~~ department of human services may ~~prescribe~~ adopt, any person who is suspected of being mentally deficient developmentally disabled, to ascertain whether or not such person is actually mentally deficient 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 state school is a proper subject for institutional care, treatment, and training at such school or facility, such person may remain as a voluntary resident at such school at the discretion of the superintendent if all other conditions for admission required by this section are met.

3. Care and treatment at the state school shall 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 state school shall be entitled to transportation as provided by rules ~~and regulations~~ of the ~~department superintendent~~ department superintendent of public instruction. The rules ~~and regulations~~ of the ~~department superintendent~~ department superintendent of public instruction shall 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 shall 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 shall be responsible for expenses incurred through care and treatment at the state school in the manner provided by chapter 25-09.

SECTION 7. AMENDMENT. Section 25-04-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-05.1. Transfer of residents - Visiting privileges - Release and placement of patients.

1. The superintendent shall have the right of temporary transfer of any resident of the state school at Grafton to an appropriate hospital or other specialized facility when in ~~his~~ the superintendent's opinion the immediate health and safety of the resident requires ~~such~~ the transfer. The superintendent shall also have the right and responsibility of indefinite transfer of a resident from one state facility for the mentally deficient

developmentally disabled to another when the best interest of the resident will be served thereby, or when such the transfer is required in conformity with the policies of the director of institutions department of human services; provided, however, that no such transfer shall be effected until after all reasonable efforts have been made to consult with the resident's parent or guardian of the person.

2. Subject to reasonable rules for the orderly operation of the state school or other state facility for the mentally deficient developmentally disabled, any parent or guardian of the person of a resident shall have the right of visiting and communicating with his a child or ward and authorizing visits and communications with others.
3. The superintendent may authorize the temporary release of any resident to the custody of his 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 his, in writing, the resident's temporary release in writing, which. The release shall must be granted at the earliest reasonable opportunity, but not more than thirty days after receipt of a written application. If such 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, he the superintendent shall so advise the director of institutions, who department of human services, which may thereupon at his discretion 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 director of institutions department of human services may apply to the proper juvenile court to have such minor declared a ward of the court.
4. The superintendent shall have the authority to may arrange for the suitable placement of a resident outside the school or other state facility and to release him the resident on placement, provided placement has been preceded by a comprehensive evaluation. No such placement shall be effected until all reasonable efforts have been made to consult with the resident's parent or guardian of the person.

SECTION 8. AMENDMENT. Section 25-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-08. Discharge of resident from institution. A mentally deficient developmentally disabled person who has been admitted as a resident shall 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 mentally deficient 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 director of institutions department of human services, the mentally deficient developmentally disabled person shall be placed on nonresident release status, but not discharged.
4. A court of competent jurisdiction orders the discharge of the mentally deficient developmentally disabled person.

Any person who is to be discharged under subsections 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 25-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-11. Disposition of mentally deficient 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 state school or other appropriate state facility, by order of a court of competent jurisdiction, such person shall be sent, at the expense of the county, to the state school in the same manner as a resident of this state who is found to be mentally deficient developmentally disabled, and the superintendent of the state school shall then arrange for the transportation of such person to the place where he the person belongs. The director of institutions department of human services shall ascertain the place where such person belongs when the same conveniently can be done.

* SECTION 10. AMENDMENT. Section 25-09-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 25-09-02 was repealed by section 8 of House Bill No. 1656, chapter 527.

25-09-02. Expenses chargeable against patient or his estate - Filing claims. Expenses for care and treatment of each patient at the state hospital and each patient over twenty-one years of age at the Grafton state school shall, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health. The supervising department shall recover monthly from the patient, if possible, or from the person who has been a patient in such institution after he has been discharged from the institution, expenses for care and treatment. The state hospital shall not recover expenses under this chapter, however, for the care and treatment of a patient transferred to the state hospital from a jail or regional corrections center. If any patient is receiving social security or is a veteran who has received, who is receiving, or who is entitled to receive compensation or pension from the veterans' administration, such expenses shall be a current claim against such patient and may be recovered monthly by the supervising department except that any amount required by the payor of such benefits to be paid directly to the patient shall, upon approval of the ~~director of institutions~~ department of human services, be credited to the patient's personal account from any money thus received.

* SECTION 11. AMENDMENT. Section 50-06-01.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.4. Structure of the department. The department shall include the state hospital, Grafton state school, San Haven, an office of human services, an office of economic assistance and county administration, administrative and fiscal support services as the executive director deems necessary, and as many other subdivisions as the executive director may deem appropriate, or as may be provided by law.

1. The office of human services shall contain the following divisions:
 - a. Developmental disabilities division.
 - b. Mental health division.
 - c. Social services division, including an aging services unit and a children and family services unit.
 - d. Vocational rehabilitation division, including regional vocational rehabilitation offices collocated with regional human service centers.
 - e. Alcoholism and drug abuse division.
2. The office of economic assistance and county administration shall include the following divisions:

* NOTE: Section 50-06-01.4 was also amended by section 3 of House Bill No. 1166, chapter 521.

- a. Public assistance division, including a food stamp unit, a housing assistance unit, an assistance payments unit, an energy assistance unit, and a child support unit.
- b. Medical assistance division.

Regional supervisors of economic assistance shall be collocated with regional human service centers and shall be responsible for maintaining a close working relationship between county social service boards and regional human service centers. The executive director of the department shall be responsible for consulting with and maintaining a close working relationship with the department of health; with the director of institutions and the superintendents of the Grafton state school, 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.

* SECTION 12. AMENDMENT. Section 54-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-01. Institutions under control of director of institutions. The director of institutions shall have full power to manage, control, and govern, subject only to the limitations contained in this chapter and in title 25, the penitentiary, the school for the blind, the school for the deaf, ~~the Grafton state school,~~ and the North Dakota industrial school, and San Haven. The director shall not have the power to manage, control, and govern the soldiers' home.

SECTION 13. EFFECTIVE DATE. This Act becomes effective on July 1, 1989.

Approved March 22, 1985

* NOTE: Section 54-23-01 was also amended by section 29 of Senate Bill No. 2089, chapter 397.

CHAPTER 312

SENATE BILL NO. 2114
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

SCHOOL FOR THE BLIND TRANSPORTATION

AN ACT to amend and reenact section 25-06-04 of the North Dakota Century Code, relating to qualifications for admission to the school for the blind and transportation costs for students; and to provide for an expiration date.

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

SECTION 1. AMENDMENT. Section 25-06-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-06-04. Qualifications for admission to school for the blind - Residents of state entitled to free education. Applicants for admission to the school for the blind must be blind or partially blind and unable to make suitable progress in the public schools of the state. The superintendent, with the approval of the director, may determine the age required for admission. The superintendent shall furnish application blanks upon request, and no person shall be admitted to the institution until the application giving such information as the director may require has been returned to and approved by the superintendent of the school for the blind. An applicant admitted to the school for the blind shall be entitled to transportation provided by the school as provided by rules and regulations of the department of public instruction. The rules and regulations of the department of public instruction shall 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 shall be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the student's individualized education program at a rate not to exceed that paid state officials. Each such applicant who is a resident of this state and who, because of his handicap, is unable to receive an education in the public schools, shall be entitled to receive an education in the school for the blind at the expense of the state.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1987, and after that date is ineffective.

Approved April 11, 1985

CHAPTER 313

SENATE BILL NO. 2115
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

SCHOOL FOR THE DEAF TRANSPORTATION

AN ACT to amend and reenact section 25-07-04 of the North Dakota Century Code, relating to the qualifications for admission to the school for the deaf and transportation costs for students; and to provide for an expiration date.

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

SECTION 1. AMENDMENT. Section 25-07-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-07-04. Qualifications for admission to school for deaf - Residents of state entitled to free education. In order to be admitted as a pupil in the school for the deaf, an applicant's hearing must be impaired to such extent that he cannot make suitable progress in the public schools of the state. The superintendent, with the approval of the director, may determine the age required for admission. The superintendent shall furnish application blanks upon request, and no person shall be admitted to the institution until the application giving such information as the director of institutions may require has been returned to and approved by the superintendent. An applicant admitted to the school shall be entitled to transportation provided by the school as provided by rules and regulations of the department of public instruction. The rules and regulations of the department of public instruction shall 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 shall be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the student's individualized education program at a rate not to exceed that paid state officials. Each such applicant who is a resident of this state and who, because of his handicap, is unable to receive an education in the public schools, shall be entitled to receive an education in the school for the deaf at the expense of the state.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1987, and after that date is ineffective.

Approved April 11, 1985

CHAPTER 314

HOUSE BILL NO. 1373
(Representatives Graba, Enget)
(Senator Shea)

HANDICAPPED PERSONS' SERVICE DOGS

AN ACT to amend and reenact section 25-13-02 of the North Dakota Century Code, relating to the use of service dogs in public places.

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

SECTION 1. Section 25-13-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-13-02. Blind or ~~physieally~~ handicapped person accompanied by guide or service dog to be admitted to public places. Every totally or partially blind person ~~shatl have~~ has the right to be accompanied by a guide dog and every ~~physieally~~ handicapped person ~~shatl have~~ has the right to be accompanied by a service dog, especially trained for those purposes, in places of public accommodations, common carriers, and all places in which the public is generally invited, without being required to pay an extra charge for the guide or service dog; provided, that such persons ~~shatl be are~~ liable for any damage done to the premises or facilities by the dogs.

Approved March 14, 1985

CHAPTER 315

HOUSE BILL NO. 1047
(Legislative Council)
(Interim Budget "C" Committee)

**TREATMENT AND CARE CENTERS FOR
DEVELOPMENTALLY DISABLED**

AN ACT to amend and reenact sections 25-16-01, 25-16-02, and 25-16-03 of the North Dakota Century Code, relating to the ownership and operation of treatment and care centers for developmentally disabled persons.

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

SECTION 1. AMENDMENT. Section 25-16-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-01. Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "Treatment or care center" means any hospital, home, or other premises, ~~owned and operated by a charitable nonprofit corporation or association,~~ especially to provide relief, care, custody, treatment, day activity, work activity, or extended employment services to developmentally disabled persons.
2. "Division" means the developmental disabilities division of the state department of human services.

SECTION 2. AMENDMENT. Section 25-16-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-02. License required. ~~Any charitable nonprofit association or corporation which operates~~ The operator of a treatment or care center for developmentally disabled persons shall secure annually from the division a license as required by rules adopted under this chapter.

SECTION 3. AMENDMENT. Section 25-16-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-03. Requirements for license. The division shall issue a license for the operation of a treatment or care center for developmentally disabled persons to reputable and responsible charitable nonprofit associations or corporations upon a showing that:

1. The premises to be used are in fit safe sanitary condition and properly equipped to provide good care and treatment;
2. The persons in active charge of the center and their assistants are qualified by training and experience to carry on efficiently the duties required of them;
3. The health, morality, safety, and well-being of the residents cared for and treated therein will be properly safeguarded;
4. There is sufficient entertainment, treatment, educational, and physical facilities and services available to the residents therein;
5. Appropriate arrangements are made for a medical and psychological examination of each resident; and
6. The provider is in compliance with rules adopted by the division under this chapter.

Approved March 22, 1985

INSURANCE COMPANIES AND RATES

CHAPTER 316

SENATE BILL NO. 2078
(Legislative Council)
(Insurance Code Revision Committee)

INSURANCE CODE REVISION

AN ACT to create and enact sections 26.1-01-03.1 and 26.1-01-03.2, and chapters 26.1-26, 26.1-27, 26.1-28, 26.1-29, 26.1-30, 26.1-31, 26.1-32, 26.1-33, 26.1-34, 26.1-35, 26.1-36, 26.1-37, 26.1-38, 26.1-39, 26.1-40, 26.1-41, 26.1-42, 26.1-43, and 26.1-44 of the North Dakota Century Code, relating to the authority of the commissioner of insurance; insurance agents, brokers, consultants, and representatives; insurance administrators; insurance vending machines; insurance contracts; insurance policies; reinsurance and double insurance; loss and notice of loss; life insurance; annuities; life insurance and annuity valuation; accident and health insurance; credit life and accident and health insurance; the North Dakota life and health insurance guaranty association; property and casualty insurance; automobile insurance and warranties; auto accident reparations; the North Dakota insurance guaranty association; legal expense insurance; and surplus line insurance; to repeal chapters 26-02, 26-03, 26-03.1, 26-03.2, 26-03.3, 26-03.4, 26-03.5, 26-03.6, 26-05, 26-06, 26-09.2, 26-10, 26-10.1, 26-11.1, 26-17.1, 26-17.2, 26-18, 26-31, 26-33, 26-34, 26-35, 26-36, 26-36.1, 26-39, and 26-41, and sections 26.1-17-13, 26.1-17-14, 26.1-17-15, 26.1-17-17, 26.1-18-15, and 26.1-18-16 of the North Dakota Century Code, sections 1 and 10 of chapter 247, sections 1 and 12 of chapter 248, and section 1 of chapter 249 of the 1977 Session Laws, section 1 of chapter 303 of the 1981 Session Laws, and section 27 of chapter 332 of the 1983 Session Laws, relating to the insurance laws remaining in title 26, uncodified provisions pertaining to those laws, contract requirements covered by title 26.1, and temporary transition from title 26 to title 26.1; to provide penalties; and to provide for transition.

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

SECTION 1. Section 26.1-01-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-01-03.1. Cease and desist authority - Hearing - Failure to appear.

The commissioner may issue an order to cease and desist when it appears that any person is engaged in an act or practice which violates or may lead to a violation of this title. The commissioner shall provide written notice to the person named in the order stating the time and place of the hearing on the matter and setting forth the alleged violation. A hearing must be held not later than ten days after the issuance of the order unless a delay is requested by all persons named in the order. The commissioner shall, within thirty days after the issuance of the cease and desist order, issue an order vacating the cease and desist order or making the cease and desist order permanent, as the facts require. The failure of any named person to appear at any proper hearing under this section after receiving notice of the hearing will cause that person to be in default and the allegations contained in the cease and desist order may be deemed to be true and may be used against the person at the hearing.

SECTION 2. Section 26.1-01-03.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-01-03.2. Injunctive authority. The commissioner may bring an action in the district court of Burleigh County to enjoin any acts or practices which are prohibited under this title, upon not less than eight days' notice to the defendants named in the action.

SECTION 3. Chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-26-01. Scope. This chapter governs the qualifications and procedures for the licensing of insurance agents, insurance brokers, insurance consultants, limited insurance representatives, and surplus lines insurance brokers. This chapter applies to all lines of insurance and types of insurers including life, health, property, liability, credit, title, fire, or marine operating on a stock, mutual, reciprocal, benevolent, fraternal, or health service plan, as set forth in this title.

26.1-26-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Insurance" includes annuities.
2. "Insurance agent" means an individual, partnership, or corporation appointed by an insurer to solicit applications for an insurance policy or to negotiate a policy on its behalf.
3. "Insurance broker" means any individual, partnership, or corporation which, for compensation, not being a licensed agent for the insurer in which an insurance policy is placed, acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself.

4. "Insurance consultant" means an individual, partnership, or corporation that, for a fee, holds oneself or itself out to the public as engaged in the business of offering any advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages promised under any insurance policy that could be issued in this state.
5. "Limited insurance representative" means an individual, partnership, or corporation authorized by the commissioner to solicit or negotiate contracts for a particular line of insurance which the commissioner may by rule deem essential for the transaction of business in this state and which does not require the professional competency demanded for a license as an insurance agent or insurance broker.
6. "Surplus lines insurance broker" means an individual, partnership, or corporation which solicits, negotiates, or procures an insurance policy from an insurer not licensed to transact business in this state which cannot be procured from an insurer licensed to do business in this state.

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 violating this section is guilty of a class B misdemeanor.

26.1-26-04. Payment to or acceptance by unlicensed person of commission prohibited - When payment or assignment of commissions permitted. No insurer, insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker may pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker within this state, unless that person held at the time the services were performed a valid license for that line of insurance as required by the laws of this state; nor may any person, other than a person licensed by this state as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker at the time the services were performed, accept any such commission, brokerage, or other valuable consideration. However, any person licensed under this chapter may pay or assign that person's commissions, or direct that the commissions be paid,

to a partnership of which that person is a member, employee, or agent, or to a corporation of which that person is an officer, employee, or agent. This section does not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

26.1-26-05. Unlicensed person - Effect - Agent for insurer. A person not licensed as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker who solicits an insurance policy on behalf of an insurer is an insurance agent within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which an insurance agent of the insurer is subject, and the insurer by compensating that person through any of its officers, agents, or employees for soliciting insurance policies thereby accepts and acknowledges that person as its agent in the transaction. A person not licensed as an insurance broker, but who solicits an insurance policy on behalf of others or transmits for others an application for an insurance policy to or from an insurer, or offers or assumes to act in the negotiations of such insurance, is an insurance broker within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which licensed brokers are subject.

26.1-26-06. Agent or limited representative - Agent of insurer. Every insurance agent or limited insurance representative who solicits or negotiates an application for insurance of any kind is, in any controversy between the insured or the insured's beneficiary and the insurer, regarded as representing the insurer and not the insured or the insured's beneficiary. This section does not affect the apparent authority of an agent.

26.1-26-07. Broker - Agent of insured. Every insurance broker or surplus lines insurance broker who solicits an application for insurance of any kind is, in any controversy between the insured or the insured's beneficiary and the insurer issuing any policy upon the application, regarded as representing the insured or the insured's beneficiary and not the insurer. However, any insurer that directly or through its agents delivers in this state to any insurance broker a policy of insurance pursuant to the application or request of the broker, acting for an insured other than oneself, is deemed to have authorized the broker to receive on its behalf payment of any premium which is due on the insurance policy at the time of its issuance or delivery.

26.1-26-08. Licensing of partnership or corporation - Notice of change of individuals. A partnership or corporation may be licensed as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker. Every member of the partnership and every officer, director, stockholder, and employee of the corporation personally engaged in this state in soliciting or negotiating policies of insurance must be registered with the commissioner, and each member, officer, director, stockholder, or employee must also be licensed. The required license fee must be

paid for the partnership or corporation and for each individual registered. The partnership or corporate licensee shall within ten business days notify the commissioner of every change relative to the individuals registered under the partnership or corporation. This section does not apply to a management association, partnership, or corporation whose operations do not entail the solicitation of insurance from the public.

26.1-26-09. Exceptions to licensing requirements. No license as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker is required of:

1. Any regular salaried officer or employee of an insurance company, licensed insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker if the officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.
2. Any person who secures and furnishes information for the purpose of group or wholesale life insurance, annuities, or group, blanket, or franchise health insurance, or for enrolling individuals under such plans or issuing certificates under such plans or otherwise assisting in administering such plans, where no commission is paid for the service.
3. Employers or their officers or employees or the trustees of any employee trust plan, to the extent that the employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided, that the employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing the insurance.
4. Employees of a creditor who enrolls debtors under a group policy; provided, that the employees receive no commission or other compensation directly related to the enrollment.

26.1-26-10. Consultant - Exceptions to licensing requirement. No license as an insurance consultant is required of:

1. An attorney licensed to practice law in this state acting in the attorney's professional capacity.
2. A licensed insurance agent, insurance broker, or surplus lines insurance broker.
3. A trust officer of a bank acting in the normal course of the trust officer's employment.

4. An actuary or a certified public accountant who provides information, recommendations, advice, or services in the actuary's or the certified public accountant's professional capacity.

26.1-26-11. License of agent or broker - Lines of insurance. An insurance agent, insurance broker, or surplus lines insurance broker may receive qualification for a license in one or more of the following lines:

1. Life insurance and annuity contracts.
2. Sickness, accident, and health insurance.
3. Credit life insurance and credit accident and health insurance.
4. Fire and allied lines.
5. Vehicle liability and vehicle physical damage insurance.
6. Comprehensive personal and general liability coverage.
7. Marine and transportation insurance.
8. Credit and mortgage guarantee insurance.
9. Burglary and theft insurance.
10. Crop insurance.
11. Bail bonds.
12. Fidelity and surety insurance.
13. Homeowners' and farmowners' multiple peril insurance.
14. Commercial multiple peril insurance.
15. Property and casualty insurance sold in connection with a credit transaction.
16. Industrial fire insurance.
17. Legal expense insurance.
18. Variable annuities and variable life insurance.
19. Title insurance.

26.1-26-12. License application - Accompanied by fees. Application for a license must be made to the commissioner by the applicant on a form prescribed by the commissioner. All applications must be

accompanied by the applicable fees as provided in section 26.1-01-07.

26.1-26-13. Agent or limited representative - Application - Age - Appointment by insurer. Every applicant for a license as an insurance agent or limited insurance representative, except a partnership or corporation, must be eighteen years or more of age. The application for a license as an insurance agent or limited insurance representative must be accompanied by a written appointment. The appointment must be made by an officer of the insurer designating the applicant as an insurance agent or limited insurance representative for the lines of insurance the applicant will be authorized to write for the insurer. An insurance agent or limited insurance representative may represent as many insurers as may appoint the agent or representative. All appointments for any licensee must be submitted on behalf of the appointing insurer, on a form prescribed by the commissioner, and unless terminated remain in force until 12:01 a.m. on the annual renewal date.

26.1-26-14. Consultant - Investigation by commissioner. Within a reasonable time after receipt of a properly completed application for a license as an insurance consultant, the commissioner may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter which the commissioner believes necessary or advisable to determine compliance with this chapter or for the protection of the public.

26.1-26-15. License requirement - Character. An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

26.1-26-16. License requirement - Insurance broker - Experience. Each applicant for a license as an insurance broker must have had not less than two years' experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm during the three years immediately next preceding the date of application and must hold and maintain a resident or nonresident license as an insurance agent in this state. The application for a license must be accompanied by an affidavit from the employer or insurer to the effect that the applicant was engaged in the required responsible insurance duties.

26.1-26-17. License requirement - Surplus lines insurance broker - Resident insurance agent's or insurance broker's license. An applicant for a license as a surplus lines insurance broker must be licensed in this state as a resident insurance agent or insurance broker qualified as to the line or lines to be written.

26.1-26-18. License requirement - Brokers - Bond - Waiver for nonresident insurance broker. Prior to issuance of a license as an insurance broker, the applicant shall file with the commissioner, and thereafter, for as long as the license remains in effect, shall

keep in force a bond in the penal sum of not less than two thousand dollars with authorized corporate surety approved by the commissioner. Prior to issuance of a license as a surplus lines insurance broker, the applicant shall file with the commissioner, and thereafter, for as long as the license remains in effect, shall keep in force a bond in the penal sum of not less than an amount equal to the taxes paid to the commissioner the previous year as required by section 26.1-44-06, with a minimum bond of five hundred dollars and a maximum bond of twenty thousand dollars required. The commissioner shall set the bond for a surplus lines insurance broker not previously licensed or whose license has lapsed, but the bond may not be less than five hundred dollars nor greater than twenty thousand dollars. The aggregate liability of the surety for claims on any bond may not exceed the penal sum of the bond. No bond may be terminated unless at least thirty days' prior written notice is given by the surety to the licensee and the commissioner. Upon termination of the license for which the bond was in effect, the commissioner shall notify the surety within ten working days. Any licensee who is the holder of a license as an insurance broker and a license as a surplus lines insurance broker may satisfy the bonding requirements by a single bond in the penal sum of not less than twenty thousand dollars.

Notwithstanding other provisions of this chapter, no new bond may be required for a nonresident insurance broker if the commissioner is satisfied that the existing bond covers the broker's insurance business in this state.

26.1-26-19. Determination of residency for license issuance - Election of residency - When void. An applicant may qualify as a resident if the applicant resides in this state or maintains the applicant's principal place of business in this state. A license issued pursuant to an application claiming residency for licensing purposes constitutes an election of residency in this state. A license is void if the licensee, while holding a resident license in this state, also holds or applies for a resident license from, or thereafter claims to be a resident of, any other state or other jurisdiction or ceases to be a resident of this state.

26.1-26-20. Nonresident license - Must hold like license elsewhere. An applicant may qualify for a nonresident license if the applicant holds a like resident license from a state, province of Canada, or other foreign country. A license issued to a nonresident of this state grants the same rights and privileges afforded a resident licensee, except as provided in section 26.1-26-47.

26.1-26-21. Nonresident to designate commissioner as attorney for service of process - Fee. The commissioner may not issue a license to any nonresident applicant until the applicant files with the commissioner a designation of the commissioner and the commissioner's successors in office, as the applicant's true and lawful attorney, upon whom may be served all lawful process in any action or proceeding instituted by or on behalf of any interested person arising out of the applicant's insurance business in this

state. The designation constitutes an agreement that the service of process is of the same legal force and validity as personal service of process in this state upon the person.

26.1-26-22. Nonresident proceeding by commissioner - Service of process - Procedure. The commissioner shall serve process upon any nonresident licensee in any action or proceeding instituted by the commissioner under this chapter by mailing the process by registered mail return receipt requested to the licensee at the licensee's last known address of record or principal place of business.

26.1-26-23. Examination of individuals. Except as provided in section 26.1-26-25, the commissioner shall subject each applicant for a license as an insurance agent, insurance broker, insurance consultant, limited insurance representative, or surplus lines insurance broker to a written examination as to competence to act as a licensee.

26.1-26-24. Examination when partnership or corporation is applicant. If an applicant is a partnership or corporation, each individual who is to be registered with the corporate or partnership license shall take the examination.

26.1-26-25. Exceptions from examination. The requirement for a written examination is subject to the following exceptions:

1. An applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like resident license in this state, other than a temporary license, within the twelve months next preceding the date of application, unless the previous license was suspended or revoked by the commissioner.
2. A nonresident applicant may be licensed without examination if the commissioner of the state of the applicant's residence certifies, by facsimile signature and seal, that the applicant has passed a similar written examination, or has been a continuous holder prior to the time the written examination was required, of a license like the license being applied for in this state.
3. An applicant who has been licensed under a like license in another state within twelve months prior to the application for a license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state, by facsimile signature and seal, as to the applicant's license and good standing in such state; provided, however, that the applicant shall take that portion of the examination pertaining to state laws and rules.
4. An applicant who has attained the designation of chartered life underwriter is only required to take that portion of

the examination for lines 1 and 18 pertaining to state laws and rules.

5. An applicant who has attained the designation of chartered property and casualty underwriter is only required to take that portion of the examination for lines 2 through 17 pertaining to state laws and rules.
6. An applicant for a license to act as a limited insurance representative may be licensed without examination in one or more of the following lines:
 - a. Any ticket-selling agent of a common carrier who acts thereunder only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by the common carrier, or an applicant selling limited travel accident insurance in transportation terminals.
 - b. Any other lines that the commissioner finds by rule do not require the professional competency demanded for a license as an agent or broker.

26.1-26-26. **Temporary license as an agent or broker.** The commissioner may issue a temporary license as an insurance agent or insurance broker for a period not to exceed ninety days without requiring an examination if the commissioner determines that the temporary license is necessary for the servicing of an insurance business in the following cases:

1. To the surviving spouse, next of kin, administrator, executor, or employee of a licensed insurance agent who died, or to the spouse, next of kin, employee, or legal guardian of a licensed insurance agent or insurance broker who became disabled.
2. To a member or employee of a partnership or officer or employee of a corporation, licensed as an insurance agent, upon the death or disability of an individual registered with the license.
3. To the designee of a licensed insurance agent entering upon active service in the armed forces of the United States.
4. In any other circumstance where the commissioner determines that the public interest will best be served by the issuance of the license.

26.1-26-27. **Approval of examination by commissioner - Contents.** Each examination must be approved for use by the commissioner and must reasonably test the applicant's knowledge as to the lines of insurance, policies, and transactions to be handled under the

license applied for, the duties and responsibilities of the licensee, and the pertinent insurance laws of this state.

26.1-26-28. Time and place of examination - Grading of examination - Notice of results. The commissioner shall designate reasonable times and places for conducting the examination for licensing. An applicant must personally take the examination. The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without discrimination as between individuals examined. The applicant must pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the area of insurance for which the applicant seeks qualification. Within ten days or as soon as is reasonable after the examination, the commissioner shall inform the applicant and the appointing insurer, where applicable, as to whether the applicant has passed. The commissioner shall issue within a reasonable time formal evidence of licensing.

26.1-26-29. Failure to pass examination - Reexamination. An applicant who fails to pass the first examination for the license applied for may retake the examination. Examination fees for subsequent examinations may not be waived.

26.1-26-30. Contents of license. The license must state the name, resident address, social security or internal revenue service identification number of the licensee, date of issue, and the line or lines of insurance covered by the license, and any other information the commissioner determines to be proper for inclusion in the license.

26.1-26-31. Term of license. A license issued under this chapter continues in force in perpetuity unless:

1. The license is suspended, revoked, or refused by the commissioner;
2. The licensee voluntarily consents to the suspension, revocation, or refusal of the license;
3. The licensee dies or in the case of a corporation or partnership, the licensee is dissolved, consolidated, merged, or otherwise has ceased to exist;
4. The licensee no longer meets the residence requirements of section 26.1-26-19;
5. The insurance agent or limited insurance representative is terminated or nonrenewed by all appointing insurers;
6. The insurance broker or surplus lines insurance broker has failed to maintain a bond as required by section 26.1-26-18, has failed to maintain a resident or nonresident license as an insurance agent as required by

section 26.1-26-16, or has failed to pay the annual renewal fee to the commissioner; or

7. The insurance consultant has failed to pay the annual renewal fee to the commissioner.

26.1-26-32. Renewal of appointments and licenses - Annual fee. An appointment of an insurance agent or limited insurance representative and the license of an insurance broker, surplus lines insurance broker, or insurance consultant terminates upon failure to pay the prescribed annual renewal fee before May first.

26.1-26-33. Notification of address change - Duty of licensee. Every licensee shall notify the commissioner of any change in the licensee's residential or business address within thirty days of the change. Any licensee who ceases to maintain residency in this state shall deliver the insurance license to the commissioner by personal delivery or by mail within thirty days after terminating residency.

26.1-26-34. Termination reports by insurer - Duty of insurer - Information furnished privileged in civil action. If an appointment is terminated, the insurer shall promptly give written notice of the termination and the effective date of the termination to the commissioner and to the licensee where reasonably possible. The commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to notify the licensee.

All notices of termination must be filed in due course on forms prescribed by the commissioner stating the grounds and circumstances of termination.

If the termination is for any of the grounds listed in this chapter, the insurer shall so notify the commissioner. Any information, document, record, or statement provided pursuant to this section may be used by the commissioner in any action taken pursuant to sections 26.1-26-42, 26.1-26-43, and 26.1-26-50; however, the information is privileged in any civil action between the reporting insurer and the terminated licensee.

26.1-26-35. Duties of consultant - Agreements. An insurance consultant shall serve with objectivity and complete loyalty the interests of the consultant's client alone and to render the client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interests. Before rendering any service set forth in subsection 4 of section 26.1-26-02, an insurance consultant shall prepare a written agreement on a form approved by the commissioner. The agreement must outline the nature of the work to be performed by the consultant and must state the fee for the work. The consultant and the client shall sign the agreement. The consultant shall retain a copy of the agreement for not less than two years after completion of the services. This copy must be available to the commissioner.

26.1-26-36. Surplus lines insurance broker's authority. A surplus lines insurance broker may act as a surplus lines insurance broker in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing, or placing insurance policies, indemnity contracts, or surety bonds on property located in, or undertakings to be carried out in, this state for the company or insurer. A surplus lines insurance broker may accept business from any licensed agent for an admitted company and may compensate the agent for the business, provided the insurance is written in conformity with this title.

26.1-26-37. Lost, stolen, or destroyed license - Issuance of duplicate. The commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this chapter upon an affidavit of the licensee, as prescribed by the commissioner, concerning the facts of the loss, theft, or destruction.

26.1-26-38. Controlled business prohibited - Definition - Formula for determination. The commissioner may not grant, renew, continue, or permit to continue any license if the commissioner finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. Controlled business means insurance written on the interests of the licensee, or those of the licensee's immediate family or of the licensee's employer; or insurance covering the licensee or members of the licensee's immediate family or a corporation, association, or partnership, or the officers, directors, substantial stockholders, partners, or employees of such a corporation, association, or partnership of which the licensee or a member of the licensee's immediate family is an officer, director, substantial stockholder, partner, associate, or employee. A license is deemed to have been, or intended to be, used for the purpose of writing controlled business if the commissioner finds that during any twelve-month period the aggregate commissions earned from such controlled business has exceeded twenty-five percent of the aggregate commissions earned on all business written by the licensee during the same period. This section does not apply to insurance written in connection with credit transactions.

26.1-26-39. Refusal of license - Notification of applicant - No refund of fees. If the commissioner finds that the applicant has not met the requirements for licensing, the commissioner shall refuse to issue the license. The commissioner shall, in writing, promptly notify the applicant and the appointing insurer, where applicable, of the refusal, stating the grounds for the refusal. All fees accompanying the application for license are not refundable.

26.1-26-40. Refusal of initial license - Notice - Hearing. If the commissioner refuses to issue a license to an applicant not previously licensed in this state, the notice to the applicant as provided in section 26.1-26-39 must state that the applicant may request a hearing within thirty days from the date of issuance of the notice. The commissioner shall hold a hearing, if requested by

the applicant, within thirty days of the receipt of the request for a hearing and upon ten days written notice to the applicant.

26.1-26-41. Prohibited activities by consultants. No licensed consultant may employ, be employed by, or be in partnership with nor receive any remuneration whatsoever from any licensed insurance agent, insurance broker, limited insurance representative, surplus lines insurance broker, or insurer arising out of activities as a consultant. No person may concurrently hold a consultant's license and a license as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker in any line.

26.1-26-42. License suspension, revocation, or refusal - Grounds. The commissioner may suspend, revoke, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

1. A materially untrue statement in the license application.
2. An acquisition or attempt to acquire a license through misrepresentation or fraud.
3. The applicant has been found to have been cheating on an examination for an insurance license.
4. Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance.
5. A conviction of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to serve the public as an insurance agent, insurance broker, insurance consultant, limited insurance representative, or surplus lines insurance broker, or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
7. A misrepresentation of the terms of any actual or proposed insurance contract.
8. The licensee has been found to have knowingly solicited, procured, or sold unnecessary, or excessive insurance coverage to any person.
9. The licensee has forged another's name to an application for insurance.

10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.
11. The licensee has been found guilty of any unfair trade practice or fraud defined in this title.
12. A violation of, or noncompliance with, any insurance laws, or violation of 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.
14. The applicant or licensee has refused to respond within twenty days to a written request by the commissioner for information regarding any potential violation of this section.

26.1-26-43. License suspension, revocation, or refusal - Partnership or corporation - Additional ground. The license of a partnership or corporation may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was not reported to the commissioner nor corrective action taken in relation to the violation.

26.1-26-44. Notification of suspension, revocation, or refusal - Duty of commissioner. The commissioner shall promptly notify all appointing insurers, where applicable, and the licensee regarding any suspension, revocation, or refusal of a license by the commissioner.

Upon suspension, revocation, or refusal of the license of a resident of this state, the commissioner shall notify the central office of the national association of insurance commissioners and the insurance commissioner of each state for whom the commissioner has executed a certificate as provided for in accordance with subsection 2 of section 26.1-26-25.

26.1-26-45. Notification of suspension or revocation of nonresident license. If the commissioner suspends or revokes any nonresident's license through a formal proceeding under this chapter, the commissioner shall promptly notify the appropriate commissioner of the licensee's residence of the action and of the particulars of the action.

26.1-26-46. License suspension, revocation, or refusal - Duty of licensee. Upon suspension, revocation, or refusal of a license, the licensee shall forthwith deliver it to the commissioner by personal delivery or by mail.

26.1-26-47. Reciprocal provision - Retaliatory action. Whenever, by the laws or rules of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of that state or jurisdiction in addition to, or in excess of, those imposed on nonresidents under this chapter, the same requirements are imposed upon residents of that other state or jurisdiction.

26.1-26-48. Commissioner may make examinations and investigations. Whenever the commissioner believes that this chapter has been violated, the commissioner, at the expense of the insurer involved, may examine, at the offices of the insurer, whether located within or without this state, all books, records, and papers of the insurer and any books, records, and papers of any insured within this state, and may examine under oath, the officers, managers, and agents of the insurer, or the insured, as to the violation.

26.1-26-49. Rulemaking authority. The commissioner may adopt reasonable rules for the implementation and administration of this chapter.

26.1-26-50. Civil penalty for violation of chapter. In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating this chapter may, after hearing, be subject to a civil fine of not less than one hundred dollars nor more than one thousand dollars. The fine may be collected and recovered in an action brought in the name of the state.

SECTION 4. Chapter 26.1-27 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-27-01. "Administrator" defined. In this chapter, "administrator" means any person who collects charges or premiums from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities other than:

1. An employer on behalf of its employees or the employees of one or more subsidiary or affiliated corporations of the employer.
2. A union on behalf of its members.
3. An insurance company, health maintenance organization, or nonprofit health service corporation either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business or prepaid health care plan including its sales representatives licensed in this state when engaged in the performance of their duties as such.

4. A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.
5. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.
6. A trust, its trustees, agents, and employees acting thereunder, established in conformity with 29 U.S.C. 186.
7. A trust exempt from taxation under section 501(a) of the federal Internal Revenue Code of 1954 as amended, its trustees, and employees acting thereunder, or a custodian, its agents and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the federal Internal Revenue Code of 1954 as amended.
8. A financial institution subject to supervision or examination by federal or state banking authorities.
9. A credit card issuing company that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided the company does not adjust or settle claims.
10. A person who adjusts or settles claims in the normal course of practice or employment as an attorney at law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

26.1-27-02. "Insurer" defined. In this chapter, "insurer" means any person, including a self-insurer, engaged as a principal in the business of annuities or life or health insurance.

26.1-27-03. Certificate of registration required - Penalty.

1. No person may act as or hold oneself out to be an administrator in this state, for the kinds of business for which the person is acting as an administrator, without a certificate of registration issued by the commissioner. Any person violating this subsection is guilty of a class B misdemeanor.
2. All applications must be accompanied by a filing fee of twenty-five dollars.
3. The commissioner shall issue a certificate unless the commissioner after due notice and hearing determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within five years.

4. The administrator shall pay an annual renewal fee of twenty-five dollars to maintain the certificate.
5. After notice and hearing, the commissioner may revoke a certificate or fine the administrator not more than ten thousand dollars, or both, or the commissioner may suspend a certificate, or fine the administrator not more than five thousand dollars, or both, upon finding that either the administrator violated section 26.1-27-05 and subsection 4 of section 26.1-27-06 and also violated subsection 1, 2, or 3 of section 26.1-27-06 or section 26.1-27-07, 26.1-27-08, 26.1-27-10, 26.1-27-11, or 26.1-27-12, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

26.1-27-04. Waiving of registration requirements. The commissioner may waive the requirements of section 26.1-27-03 for any person or class of persons. The factors taken into account in granting waiver include:

1. Whether the person acting as an administrator is primarily in a business other than that of administrator.
2. Whether the financial strength and history of the organization indicates stability in its continuity of doing business.
3. Whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of the requirements.

26.1-27-05. Written agreement required - Trust agreement - Retention. No person may act as an administrator without a written agreement between the administrator and the insurer. The administrator and the insurer shall retain the written agreement as part of their official records for the duration of the agreement and five years thereafter. Where a policy is issued to a trustee or trustees, the administrator shall furnish a copy of the trust agreement and any amendments thereto to the insurer. The administrator and the insurer shall retain a copy of the trust agreement, with amendments, as part of their official records for the duration of the policy and five years thereafter.

26.1-27-06. Contents of agreement - Requirements. The agreement between the administrator and the insurer must contain:

1. A provision with respect to underwriting or other standards pertaining to the business underwritten by the insurer.
2. A provision that the administrator may use only such advertising pertaining to the business underwritten by an

- insurer as has been approved by the insurer in advance of its use.
3. A provision that withdrawals from the fiduciary account may be made only for:
 - a. Remittance to an insurer entitled thereto.
 - b. Deposit in an account maintained in the name of the insurer.
 - c. Transfer to and deposit in a claims paying account, with claims to be paid as provided in section 26-17.2-08.
 - d. Payment to a group policyholder for remittance to the insurer entitled thereto.
 - e. Payment to the administrator of its commission, fees, or charges.
 - f. Remittance of return premiums to the person or persons entitled thereto.
 4. Provisions which include the requirements of sections 26.1-27-08, 26.1-27-10, 26.1-27-11, and 26.1-27-12 except insofar as those requirements do not apply to the functions performed by the administrator.

26.1-27-07. Notification required. Where the services of an administrator are used, the administrator shall provide a written notice approved by the insurer, to insureds, advising them of the identity of and relationship among the administrator, the policyholder, and the insurer. Where an administrator collects funds, it shall identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for the insurance coverage.

26.1-27-08. Premium collection - Fiduciary account required. All insurance charges or premiums collected by an administrator on behalf of or for an insurer or insurers, and return premiums received from such insurer or insurers, must be held by the administrator in a fiduciary capacity. The funds must be immediately remitted to the person or persons entitled thereto, or must be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer, the administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all such records and, upon request of an insurer, shall furnish the insurer with copies of such records pertaining to

deposits and withdrawals on behalf of or for the insurer. The administrator may not pay any claim by withdrawals from the fiduciary account.

26.1-27-09. Payment to administrator. Whenever an insurer uses the services of an administrator, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured is deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator is not deemed payment to the insured or claimant until the payment is received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from its failure to make payments to the insurer, insureds, or claimants.

26.1-27-10. Payment of claims. All claims paid by the administrator from funds collected on behalf of the insurer may be paid only on drafts of and as authorized by the insurer.

26.1-27-11. Claim adjustment or settlement. With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to the policies may not be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

26.1-27-12. Maintenance of information. Every administrator shall maintain at its principal administrative office for the duration of the written agreement and five years thereafter adequate books and records of all transactions between it, insurers, and insureds. The books and records must be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Any trade secrets contained therein, including the identity and addresses of policyholders and certificate holders, are confidential, except the commissioner may use such information in any proceedings instituted against the administrator. The insurer shall retain the right to continuing access to the books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in the books and records.

SECTION 5. Chapter 26.1-28 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-28-01. Sale of insurance from vending machines restricted. No insurance may be offered for sale, issued, or sold by or from any vending machine or appliance or any other medium, device, or object designed or used for vending purposes, in this chapter referred to as a vending machine, except as provided in this chapter.

26.1-28-02. Sale of insurance through vending machines under certain conditions. Resident insurance agents licensed by the commissioner

under this title to solicit applications for and to sell policies of personal travel accident insurance providing benefits for accidental bodily injury or accidental death may also solicit applications for and issue or sell such insurance by means of vending machines supervised by them and placed in locations for the convenience of the traveling public, upon the following conditions:

1. That each policy is reasonably suited for sale and issuance through a vending machine, and that use of a vending machine in a proposed location would be of material convenience to the traveling public.
2. That the type of vending machine proposed to be used is reasonably suitable and practical for the purpose.
3. That reasonable means, as determined by the commissioner, are provided for informing the prospective purchaser of the benefits, limitations, and exclusions of the policy, the premium rates, the name and address of the agent, and the name and home office address of the insurer.
4. That the vending machine is constructed and operated to retain, or is provided with a suitable place for deposit and safekeeping of, a copy of the application, which shows the date of the application, name and address of the applicant and the beneficiary, and the amount of insurance.
5. That no policy of insurance sold through a vending machine may be for a period of time longer than the duration of a specified one-way or round trip not exceeding one hundred eighty days.
6. That the vending machine has provided on it or immediately adjacent thereto, in a prominent location, adequate envelopes for use of purchasers in mailing policies vended through the machine, or that the policy itself, if designed to permit the procedure, may be mailed without an envelope; provided, however, that the commissioner may modify or waive this requirement, by a writing delivered to the agent.
7. That each vending machine is supervised, inspected, and tested by the agent with such frequency as may reasonably be required by the commissioner, and if any machine is not in good working condition the agent shall promptly cause a notice to be displayed on the machine that the machine is out of order, and cause the machine to be promptly removed from service until it is in proper working order.
8. That prompt refund by the agent is provided to each applicant or prospective applicant of money deposited in any defective vending machine and for which no insurance, or a less amount than paid for, is actually received.

The commissioner may adopt by rule additional conditions for types and locations of vending machines, their maintenance and operation, and the methods to be used by the agent in the solicitation and sale of insurance by means of vending machines as are reasonable and necessary.

26.1-28-03. Licensing of vending machine devices - Expiration date.

The insurance agent shall apply for a license for each vending machine to be used. The commissioner shall prescribe the form of the application. A fee of two dollars for each vending machine must be paid at the time of making the application. Upon approval of the application the commissioner shall issue to the agent a special vending machine license. The license applies to a specific vending machine or to any machine of identical type which, after written notice by the agent to the commissioner, is substituted for it. The license must specify the name and address of the agent, the name and home office address of the insurer, the name or other identifying information of the policy or policies to be sold, the serial number or other identification of the vending machine, and the address, including the location on the premises, where the machine is to be in operation. A vending machine for which a license has been issued for operation at a specific address may be transferred to a different address during the license year upon written notice to the commissioner at the time of the transfer. The license for each vending machine expires April thirtieth of each year, but may be renewed from year to year by the commissioner upon approval of the application of the agent, the furnishing of information requested by the commissioner, and the payment of two dollars for each license year or part thereof for each machine. Proof of the existence of a subsisting license must be displayed on or about each vending machine in use in the manner the commissioner may reasonably require.

26.1-28-04. Suspension, revocation, or refusal of license - Notice and opportunity to be heard. The license for each vending machine is subject to expiration, suspension, or revocation coincidentally with that of the agent or the insurer. The commissioner also may suspend, revoke, or refuse to renew the license as to any vending machine concerning which the commissioner finds any conditions upon which the machine was licensed or referred to in section 26.1-28-02 have been violated, or no longer exist, or that the machine is being used or operated by the agent in violation of the laws of this state. Before suspending, revoking, or refusing to renew a license for a vending machine, the commissioner shall conduct a hearing and shall make a determination upon the basis of the standards, conditions, and requirements of this section.

26.1-28-05. Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

SECTION 6. Chapter 26.1-29 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-29-01. "Insurance contract" defined. An insurance contract is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

26.1-29-02. "Insurer" and "insured" defined. An insurer is a person who undertakes to indemnify another by an insurance contract, and the insured is the person indemnified.

26.1-29-03. Who may be parties to insurance contract. Anyone who is capable of making a contract, except as restricted by law, may be an insurer, and anyone except a public enemy may be an insured.

26.1-29-04. "Insurable interest" defined and classified. An insurable interest is an interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might damnify directly the insured, and may consist in:

1. An existing interest;
2. An inchoate interest founded on an existing interest; or
3. An expectancy coupled with an existing interest in that out of which the expectancy arises.

26.1-29-05. Insurable interest essential to insurance contract. The sole object of insurance is the indemnity of the insured, and if the insured has no insurable interest, the contract is void.

26.1-29-06. When insurable interest must exist. An insurable interest must exist when the insurance takes effect and when the loss occurs but need not exist in the meantime.

26.1-29-07. Measure of insurable interest. The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury of the property.

26.1-29-08. Carrier or depositary has insurable interest. A carrier or depositary of any kind has an insurable interest in a thing held by the carrier or depositary as such to the extent of its value.

26.1-29-09. Insurable interest in life or health insurance. Every person has an insurable interest in the life and health of:

1. Oneself.
2. Any person on whom the person depends wholly or in part for education or support.
3. Any person under a legal obligation to the person for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance.

4. Any person upon whose life any estate or interest vested in the person depends.

26.1-29-10. **Contingent or expectant interest not insurable.** A mere contingent or expectant interest in anything, not founded on an actual right to the thing nor upon any valid contract for it, is not insurable.

26.1-29-11. **What may be insured against.** Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest or create a liability against the person may be insured against, subject to this title, with the exception of an insurance for or against the drawing of any lottery or for or against any chance or ticket in a lottery drawing a prize.

26.1-29-12. **Effect of change in insurable interest.** A change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent until the interest in the thing insured and the interest in the insurance are vested in the same person, except as follows:

1. In the cases of life, accident, and health insurance.
2. A change of interest in a thing insured after the occurrence of an injury which results in a loss does not affect the right of the insured to indemnity for the loss.
3. A change of interest in one or more of several distinct things insured by one policy does not avoid the insurance as to the others.
4. A change of interest by will or succession on the death of the insured does not avoid an insurance, and the decedent's interest in the insurance passes to the person taking the decedent's interest in the thing insured.
5. A transfer of interest by one of several partners, joint owners, or owners in common who are insured jointly to the others does not avoid an insurance even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.
6. The encumbering of one or more of several distinct things insured by one policy does not render void any insurance upon the things not covered by the encumbrance, but in case of loss or damage, such an amount must be deducted from the insurance as the value of the property so encumbered bears to the value of all the property covered by the policy.

Any agreement to waive subsection 3 or 6 is void.

26.1-29-13. **Mutual disclosures required in insurance contract.** Each party to an insurance contract must communicate to the other in good faith all facts within the party's knowledge which are or which the party believes to be material to the contract and which the other party has not the means of ascertaining and as to which the party makes no warranty.

26.1-29-14. **"Concealment" defined.** Concealment is a neglect to communicate that which a party knows and ought to communicate.

26.1-29-15. **Rescission for concealment.** A concealment, whether intentional or unintentional, entitles the injured party to rescind an insurance contract. An intentional and fraudulent omission on the part of one insured to communicate information of matters proving or tending to prove the falsity of a warranty entitles the insurer to rescind.

26.1-29-16. **Matters as to which disclosure is not required.** Neither party to an insurance contract is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those that the other knows.
2. Those that in the exercise of ordinary care the other ought to know and the former has no reason to suppose the other ignorant.
3. Those that the other waives communication.
4. Those that prove or tend to prove the existence of a risk excluded by a warranty and which are not otherwise material.
5. Those that relate to a risk excepted from the policy and are not otherwise material.

26.1-29-17. **Materiality of matters - How determined.** Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due in forming the party's estimate of the disadvantages of the proposed contract or in making the party's inquiries.

26.1-29-18. **Presumption of knowledge.** Each party to an insurance contract is bound to know all the general causes which are open to the party's inquiry equally with that of the other and which may affect either the political or material perils contemplated and all general usages of trade.

26.1-29-19. **Communication of material facts may be waived.** The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, when

they distinctly are implied in other facts of which information is communicated.

26.1-29-20. Information as to interest need not be communicated. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to inquiry, except as required to prepare the policy as prescribed by section 26.1-30-01.

26.1-29-21. Matters of opinion need not be disclosed. Neither party to an insurance contract is bound to communicate, even upon inquiry, information of the party's own judgment upon the matters in question.

26.1-29-22. Representation - Form - When made. A representation, either oral or written, may be made before or at the time of issuing the policy.

26.1-29-23. Interpretation of representations regarding insurance. A representation is to be interpreted by the general rules of contract interpretation. A representation as to the future is a promise unless the representation appears that it was merely a statement of belief or expectation. A representation cannot qualify an express provision in an insurance contract, but it may qualify an implied warranty.

26.1-29-24. False representation - Materiality and effect. A representation is false when the facts fail to correspond with its assertions or stipulations. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. The materiality of a representation is determined by the same rule which determines the materiality of a concealment.

26.1-29-25. Misrepresentations - Determination of materiality - Effect. An oral or written misrepresentation made in the negotiation of an insurance contract or policy by the insured or in the insured's behalf is material or defeats or avoids the policy or prevents its attaching only if the misrepresentation has been made with actual intent to deceive or unless the matter misrepresented increased the risk of loss.

26.1-29-26. Representations on information and belief. When a person insured has no personal knowledge of a fact, the person may repeat information which that person has upon the subject and which that person believes to be true with the explanation that that person does so on the information of others, or that person may submit the information in its whole extent to the insurer. In neither case is the person responsible for the truth of the representation unless it proceeds from an agent of the insured who has a duty to give the information.

26.1-29-27. Time to which representation refers. A representation must be presumed to refer to the time of the completion of the insurance contract.

26.1-29-28. Alteration or withdrawal of representation. A representation may be altered or withdrawn before the effective date of the insurance but not afterwards.

26.1-29-29. Insurance of mortgaged property - Act of mortgagor may avoid insurance. When a mortgagor of property effects insurance in the mortgagor's own name providing that the loss is payable to the mortgagee, or when the mortgagor assigns an insurance policy to the mortgagee, the insurance is considered to be upon the interest of the mortgagor. The mortgagor does not cease to be a party to the original contract, and any act of the mortgagor which otherwise would avoid the insurance will have the same effect although the property is in the hands of the mortgagee.

26.1-29-30. New contract on transfer of insurance on mortgaged property - Effect of mortgagor's acts. If an insurer assents to the transfer of an insurance contract from a mortgagor to a mortgagee and at the time of the insurer's assent imposes further obligations on the assignee, making a new contract with the assignee, the acts of the mortgagor cannot affect the mortgagee's right under the insurance.

26.1-29-31. Modification of insurance contract - Exercise of right of rescission. This chapter applies to a modification of an insurance contract as well as to its original formation. The right to rescind an insurance contract given to the insurer under the provisions of this title may be exercised at any time prior to the commencement of an action on the contract.

SECTION 7. Chapter 26.1-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-30-01. "Insurance policy" defined - Requirements. An insurance policy is the written insurance contract. It must specify:

1. The parties between whom the contract is made.
2. The rate of premium.
3. The property or life insured.
4. The interest of the insured in the property insured if the insured is not the absolute owner of the property.
5. The risks insured against.
6. The period during which the insurance is to continue.

26.1-30-02. Policy executed by gambling void. Every insurance policy executed by way of gaming or wagering is void.

26.1-30-03. Policies classified - "Open", "running", and "valued" policies defined. An insurance policy is open, running, or valued, and these terms are defined as follows:

1. An open policy is one in which the value of the thing insured is not agreed upon but is left to be ascertained in case of loss.
2. A running policy is one which contemplates successive insurances and which provides that the object of the policy may be defined from time to time, especially as to the subjects of insurance, by additional statements or endorsements.
3. A valued policy is one which expresses on its face an agreement that the thing insured must be valued at a specified sum.

26.1-30-04. Insurance only on interest of insured - Stipulation of interest void. When the name of the person intended to be insured is specified in an insurance policy, it can be applied only to that person's own proper interest. Every stipulation in an insurance policy for the payment of loss regardless of whether the person insured has or has not any interest in the property insured or that the policy is proof of such interest is void.

26.1-30-05. Policy may provide for benefit to any owner. An insurance policy may be written so it will inure to the benefit of whomever, during the continuance of the risk, may become the owner of the interest insured.

26.1-30-06. Insurance by agent or trustee may be designated in policy. When an insurance is made by an agent or trustee, the fact that the principal or beneficiary is the person actually insured may be indicated by designation of the agent or trustee or by other general words in the insurance policy.

26.1-30-07. Joint or common interest must be shown in policy. When an insurance policy is entered into by a part owner of an interest, the terms of the insurance policy must be applicable to joint or common interest for the policy to be effective as to the interests of other part owners.

26.1-30-08. Person intended may claim benefit of policy. When the description of the insured in an insurance policy is so general that it may comprehend any person or any class of persons, the benefit of the policy may be claimed only by a person who can show that it was intended to include that person.

26.1-30-09. Agreement not to transfer claim on policy is void. An agreement made before a loss occurs that the insured will not transfer any claim that might arise on the insurance policy is void.

26.1-30-10. **Warranties - Form and scope.** A warranty is either express or implied. No particular form of words is necessary to create a warranty. It may relate to the past, present, or future, or to all of them.

26.1-30-11. **Express warranty must be written as part of policy.** Every express warranty made at or before the execution of an insurance policy must be contained in the policy or in another instrument signed by the insured and referred to in the policy as a part of the policy.

26.1-30-12. **Statement of fact in policy is a warranty.** A statement in an insurance policy of a matter relating to the person or thing insured or to the risk as a fact is an express warranty thereof.

26.1-30-13. **Statement of intention in policy is a warranty.** A statement in an insurance policy which imports that it is intended to do or not to do a thing which materially affects the risk is a warranty that the act or omission will take place.

26.1-30-14. **Breach of warranty - When excused.** When, before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes impossible or unlawful at the place of the contract, the omission to fulfill the warranty does not avoid the insurance policy.

26.1-30-15. **Policy may be rescinded for violation of material warranty.** The violation of a material warranty or other material provision of an insurance policy on the part of either party to the policy entitles the other to rescind.

26.1-30-16. **Effect of nonfraudulent breach of warranty in policy.** A breach of warranty without fraud exonerates an insurer from the time the breach occurs, or when a warranty is broken in its inception, prevents the insurance policy from attaching to the risk.

26.1-30-17. **Breach of immaterial provision does not avoid policy unless otherwise provided.** An insurance policy may declare that a violation of specified provisions of the policy avoids it. In the absence of such declaration, the breach of an immaterial provision does not avoid the insurance policy.

26.1-30-18. **Inception and expiration of policies - Inception of hail insurance policies.** An insurance policy covers the insured at 12:01 a.m. on the day on which coverage begins and expires at 12:01 a.m. on the day of expiration of the policy. However, a policy of insurance on growing crops against loss by hail takes effect at the time and on the day stated on the application for the insurance. The provision allowing a policy of insurance on growing crops against loss by hail to take effect as provided on the application may not be limited or restricted by rule or bulletin of the commissioner.

26.1-30-19. **Policy forms to be filed with and approved by commissioner.**

1. No insurance policy, contract, agreement, or rate schedule may be issued or delivered in this state until the form of that policy, contract, agreement, or rate schedule has been filed with and approved by the commissioner.
2. No life insurance policy, certificate, contract, or agreement or annuity contract may be issued for delivery or delivered to any person in this state nor may any application, rider, or endorsement be used in connection therewith until the form thereof has been filed with and approved by the commissioner and is in compliance with chapters 26.1-33, 26.1-34, 26.1-35, and 26.1-37.
3. No insurance policy, certificate, contract, or agreement or notice of proposed insurance against loss or expense from the sickness, bodily injury, or death by accident of the insured may be issued for delivery or delivered to any person in this state nor may any application, rider, or endorsement be used in connection therewith until the form thereof and the classification of risks and the premium rates, or in the case of cooperatives or assessment companies the estimated costs pertaining thereto, have been filed with and approved by the commissioner. A form must be disapproved if the benefits provided are unreasonable in relation to the premium charge or if the benefits do not comply with chapters 26.1-36 and 26.1-37.
4. No casualty or fire and property insurance policy, certificate, contract, or agreement may be issued for delivery or delivered to any person in this state nor may any application, rider, or endorsement be used in connection therewith until the form thereof has been filed and approved by the commissioner to the extent rates are filed and approved pursuant to chapter 26.1-25.

26.1-30-20. Procedure for approval, disapproval, and withdrawal of approval by commissioner. No insurance policy, certificate, contract, agreement, or rate schedule, except as is otherwise provided, may be issued, nor may any application, rider, or endorsement be used in connection therewith until the expiration of thirty days after it has been filed unless the commissioner gives written approval. The commissioner may extend the thirty-day period for an additional period not to exceed fifteen days if the commissioner gives written notice within the thirty-day period to the insurer which made the filing that the commissioner needs the additional time for the consideration of the filing.

26.1-30-21. Disapproval of form by commissioner - Notice and hearing.

1. If the commissioner disapproves any form, the commissioner shall notify the company or organization which filed the form within thirty days after filing or within the additional period provided for in section 26.1-30-20 and provide written notice of disapproval of the form,

specifying the reasons for disapproval and stating that a hearing may be requested in writing within forty-five days. No company or organization may issue any insurance policy in the form which has been disapproved. If a hearing is requested, the commissioner may suspend or postpone the effective date of disapproval.

2. The commissioner may, at any time after a hearing of which not less than twenty days written notice has been given to the insurer, withdraw approval of any form if it contains a provision which is unjust, unfair, inequitable, misleading, or deceptive, or on any of the grounds stated in this title. It is unlawful for the insurer to issue the form or use it in connection with any policy after the effective date of withdrawal of approval. The notice of any hearing called under this subsection must specify the matters to be considered at the hearing and any decision affirming disapproval or directing withdrawal of approval under this section must be in writing and must specify the reasons for the decision.

SECTION 8. Chapter 26.1-31 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-31-01. "Reinsurance contract" defined. A reinsurance contract is one by which an insurer contracts with a third person to insure the insurer against loss or liability by reason of an original insurance contract made by the insurer.

26.1-31-02. Scope of reinsurance contract. A reinsurance contract is presumed to be a contract of indemnity against liability and not merely against damage.

26.1-31-03. Interest of insured in reinsurance contract. The original insured has no interest in a reinsurance contract.

26.1-31-04. Disclosures required on reinsurance. When an insurer obtains reinsurance, the insurer must communicate all the representations of the original insured and all the knowledge and information the insurer possesses, regardless of when acquired, which is material to the risk.

26.1-31-05. "Double insurance" defined. A double insurance exists when the same person is insured by several insurers separately in respect to the same interest.

26.1-31-06. Double insurance of one of several things. The procurement of any other insurance contract upon one or more of several distinct interests insured by one insurance policy does not render void any insurance upon the interests not covered by such other insurance contract. In case of loss or damage, the value of property doubly insured shall be deducted from the value of all the property covered by the insurance policy. Any agreement made to waive the provisions of this section is void.

26.1-31-07. **Contribution of insurers on fire loss doubly insured.** In case of double fire insurance, each insurer must contribute proportionally towards the loss without regard to the dates of the insurance policies.

SECTION 9. Chapter 26.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-32-01. **Liability of insurer for loss - Proximate and remote cause.** An insurer is liable for a loss proximately caused by a peril insured against even though a peril not contemplated by the insurance contract may have been a remote cause of the loss. An insurer is not liable for a loss of which the peril insured against was only a remote cause.

26.1-32-02. **Liability of insurer for loss in rescuing thing insured.** An insurer is liable when the thing insured is rescued from a peril insured against that otherwise would have caused a loss, if in the course of rescue the thing is exposed to peril not insured against which permanently deprives the insured of its possession in whole or in part. The insurer is liable, also, when a loss is caused by efforts to rescue the thing insured from a peril insured against.

26.1-32-03. **Insurer not liable for excepted peril.** When a peril is excepted specially in an insurance contract, a loss which would not have occurred but for that peril is excepted although the immediate cause of the loss was a peril which was not excepted.

26.1-32-04. **Willful act exonerates insurer, negligence does not.** An insurer is not liable for a loss caused by the willful act of the insured, but the insurer is not exonerated by the negligence of the insured or of the insured's agents or others.

26.1-32-05. **Notice of loss must be given promptly.** In case of loss upon an insurance against fire, an insurer is exonerated if notice of the loss is not given to the insurer by some person insured or entitled to the benefit of the insurance without unnecessary delay.

26.1-32-06. **Proof or notice of loss - Requirements.** When preliminary proof of loss is required by an insurance policy, the insured is not bound to give such proof as would be necessary in a court, but it is sufficient for the insured to give the best evidence which the insured has at the time.

26.1-32-07. **Waiver of defects in notice of loss.** All defects in a notice of loss or in preliminary proof of loss which the insured might remedy and which the insurer omits to specify to the insured without unnecessary delay as grounds of objection are waived.

26.1-32-08. **Proof of loss - Insurer to furnish blanks - Waiver.** When notice of loss is given to the insurer on behalf of the insured or the beneficiary of a life insurance policy, the insurer, within twenty days after receipt of notice, shall furnish to the insured or beneficiary, as the case may be, a blank form of proof of loss. In

the case of life insurance, the beneficiary shall have ninety days after receipt of the blank form in which to make proof of loss. In the case of insurance other than life insurance, the insured shall have sixty days after the blank form is furnished in which to make proof of loss. If the insurer fails to furnish a blank form of proof of loss within the required time, the insurer has waived the requirement of proof of loss. Any agreement made to waive the provisions of this section is void.

26.1-32-09. Waiver of delay in presenting notice or proof of loss. Delay in the presentation to an insurer of notice or proof of loss is waived if the delay is caused by any act of the insurer, or if the insurer fails to make a prompt and specific objection.

26.1-32-10. Policy requiring corroboration - Proof of loss - How made. If an insurance policy requires the certificate or testimony of a person other than the insured for a preliminary proof of loss, it is sufficient for the insured to use reasonable diligence to procure the evidence and in case of the refusal of the person to provide evidence, to furnish reasonable evidence to the insurer that refusal was not induced by any just grounds of disbelief of the facts necessary to be certified.

SECTION 10. Chapter 26.1-33 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-33-01. Life insurance policy contains entire contract. Every life insurance policy issued or delivered in this state by any life insurance corporation doing business in the state must contain the entire contract between the parties.

26.1-33-02. Solicitation of life insurance regulated by rule of the commissioner. Insurers must 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 adopt by rule the national association of insurance commissioners life insurance disclosure model regulation of December 9, 1983.

26.1-33-03. Form of life insurance policy restricted. No life insurance policy may be issued or delivered in this state unless the form of the policy is authorized by this chapter.

26.1-33-04. Single premium and nonparticipating life policies. A single premium life insurance policy may be issued in any form prescribed in this chapter omitting therefrom provisions or portions thereof applicable only to other than single premium policies. A nonparticipating life insurance policy may be issued in any form prescribed in this chapter if the policy contains a provision that

the policy is nonparticipating, and the policy omits clauses for participation in the surplus of the company.

26.1-33-05. Provisions required in life policy. No life insurance policy may be issued or delivered in this state, unless the policy contains:

1. A provision that all premiums are payable in advance either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who are named in the policy.
2. A provision that the policyholder is entitled to a thirty-one day grace period for the payment of every premium after the first, which may be subject to an interest charge, during which grace period the insurance continues in force. The provision may contain a stipulation that if the insured dies during the grace period, the overdue premium will be deducted in any settlement under the policy.
3. A provision that the policy constitutes the entire contract between the parties and is incontestable after it has been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums and except for violations of the policy relating to naval or military service in time of war, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions that grant additional insurance specifically against death by accident also may be excepted.
4. A provision that all statements made by the insured, in the absence of fraud, are representations and not warranties, and that no such statement avoids the policy unless it is contained in a written application and a copy of the application is endorsed upon or attached to the policy when issued.
5. A provision that if the age of the insured has been understated, the amount payable under the policy is such as the premium would have purchased at the correct age.
6. A provision that the policy participates in the surplus of the company and that, beginning not later than the end of the third policy year, the company annually will determine and account for the portion of the divisible surplus accruing on the policy, and that the owner of the policy has the right each year to have the current dividend arising from such participation paid in cash; and if the policy provides other dividend options, it must provide further which one of the four standard options is effective if the owner of the policy does not elect any of the other options. The four standard options are:

payment in cash; application toward payment of any premiums; application to the purchase of paid-up additions to the policy; or accumulation to the credit of the policy with interest at the rate provided for in the policy and payable at the maturity of the policy or at the anniversary of the policy. This provision, however, is not required in nonparticipating policies.

7. A provision that after the policy has been in force three years, the company at any time while the policy is in force, will advance on proper assignment of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the owner of the policy, less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, computed according to a mortality table, interest rate, and method of valuation permitted by chapter 26-10.1, less a sum not more than two and one-half percent of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from the loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. The provision may provide further that the loan may be deferred for not exceeding six months after the application for the loan is made. It must be stipulated further in the policy that failure to repay any advance or to pay interest thereon does not void the policy unless the total indebtedness thereon to the company equals or exceeds the loan value at the time of the failure nor until one month after notice has been mailed by the company to the last known address of the insured and of the assignee, if any. No other condition may be exacted as a prerequisite to any such advance. This provision is not required in a policy of term insurance.
8. A provision that if, in event of default in premium payments, the value of the policy is applied to the purchase of other insurance, and if the insurance is in force and the original policy has not been surrendered to the company and canceled, the policy may be reinstated within three years from the default upon evidence of insurability satisfactory to the company and payment of arrears of premiums with interest.
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.
10. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

11. A title on the face and on the back of the policy correctly describing the policy.
12. A statement whether any conditions or restrictions of liability by reason of travel, occupation, change of residence, or suicide are provided. These restrictions, except in the case of armed forces or military service in time of war, may only be effective during the first year after the issuance of the policy for suicide and for two years after the issuance of the policy in all other instances.

Any of the foregoing provisions or portions thereof, relating to premiums not applicable to single premium policies, may not be incorporated to the extent to which they are inapplicable in a single premium policy.

26.1-33-06. Provisions prohibited in life policy. No life insurance policy may be issued or delivered in this state if it contains any of the following:

1. A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy is less than the loan value thereof; or any provision for forfeiture for failure to repay any such loan or to pay interest on the loan unless the provision contains a stipulation that no forfeiture occurs until at least one month after notice has been mailed by the company to the last known address of the insured and of the assignee, if any.
2. A provision limiting the time within which any action may be commenced to less than five years after the claim for relief accrues.
3. A provision by which the policy purports to be issued or take effect more than six months before the original application for the insurance was made. This subsection does not prohibit the exchange, alteration, or conversion of any policy of life insurance.
4. A provision for any mode of settlement at maturity of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on the policy and less any premium that by the terms of the policy may be deducted.

26.1-33-07. Life policy issued by domestic companies in foreign state may conform to laws thereof. The life insurance policies of a domestic life insurance company, when issued or delivered in any other state, country, province, or territory, may contain any provision required by the laws of the state, country, province, or territory in which issued, anything in this chapter to the contrary notwithstanding.

26.1-33-08. Exempted companies. Sections 26.1-33-03 through 26.1-33-07 do not apply to annuity or industrial policies nor to corporations or associations operating on the assessment or fraternal plan.

26.1-33-09. Cooperative or assessment life association must identify policies. Every cooperative or assessment life association transacting business in this state shall print in bold type and in red ink, near the top of the front page of each policy or certificate issued upon the life of any resident of this state, the words "issued upon the assessment plan".

26.1-33-10. Agreement depriving insured in life policy of right to apportionment of surplus and automatic insurance void. No agreement between a life insurance company and a holder of a participating policy or an applicant for insurance under a participating policy relating to the apportionment annually of the surplus of the company, the rights of the policyholder in the surplus, automatic insurance, or to the limitation on contingency reserves, waives any of the provisions of this chapter relating thereto.

26.1-33-11. Group life policy - Required provisions. No group life insurance policy may be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the insureds, or at least as favorable to the insureds and more favorable to the policyholder; provided, however, that the standard provisions required for an individual life insurance policy may not apply to a group life insurance policy:

1. A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage 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 such a grace period.
2. A provision that the validity of the policy may not be contested except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to insurability may be used in contesting the validity of the insurance with respect to which the statement was made after the insurance has been in force prior to the contest for a period of two years during the insured's lifetime nor unless it is contained in a written instrument signed by the insured; provided, however, that no such provision may preclude the assertion of any time of defenses based upon provisions in the policy which relate to eligibility for coverage.

3. A provision that a copy of the application, if any, of the policyholder will be attached to the policy when issued, that all statements made by the policyholder or by the persons insured are representations and not warranties, and that no statement made by any insured may be used in any contest unless a copy of the instrument containing the statement is or has been furnished to the insured or, in the event of death or incapacity of the insured, to the insured's beneficiary or personal representative.
4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the individual's coverage.
5. A provision specifying an equitable adjustment of premiums or of benefits or of both to be made if the age of an insured has been misstated. The provision must contain a clear statement of the method of adjustment to be made.
6. A provision that any sum becoming due by reason of the death of an insured is payable to the beneficiary designated by the insured, except that where the policy contains conditions pertaining to family status the beneficiary may be the family member specified by the policy terms, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding five thousand dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.
7. If the group life insurance policy is on a plan of insurance other than the term plan, a nonforfeiture provision which in the opinion of the commissioner is equitable to the insureds and to the policyholder, but this does not require the policy to contain the same nonforfeiture provision required for an individual life insurance policy.
8. A provision that the insurer will issue to the policyholder for delivery to each insured a certificate setting forth a statement as to the insurance protection to which that person is entitled, a statement as to any dependent's coverage included in the certificate, and the rights and conditions set forth in subsections 9, 10, 11, and 12.

9. A provision that if the insurance, or any portion of it, on an insured or on the dependent of an insured, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, the insured is entitled to have issued to the insured by the insurer, without evidence of insurability, an individual life insurance policy without disability or other supplementary benefits, provided application for the individual policy is made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that:
 - a. The individual policy must, at the option of such person, be on any one of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance.
 - b. The individual policy must be in an amount not in excess of life insurance which ceases because of such termination, less the amount of life insurance for which the person becomes eligible under the same or any other group policy within thirty-one days after termination, provided that any amount of insurance which has matured on or before the date of termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, may not, for purposes of this provision, be included in the amount which is considered to cease because of the termination; and
 - c. The premium on the individual life insurance policy is at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to the individual age attained on the effective date of the individual policy.

Subject to the same conditions set forth above, the conversion privilege must be available to a surviving dependent, if any, at the death of the employee or member, with respect to the coverage under the group policy which terminates by reason of such death and to the dependent of the employee or member upon termination of coverage of the dependent, while the employee or member remains under the group policy, by reason of the dependent ceasing to be a qualified family member under the group policy.

10. A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every insured at the date of termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five years prior to the termination date is

entitled to have issued by the insurer an individual life insurance policy, subject to the same conditions and limitations as are provided by subsection 9, except that the group policy may provide that the amount of such individual policy may not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the person is or becomes eligible under a group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, or (b) ten thousand dollars.

11. A provision that if an insured, or the insured dependent of a covered person, dies during the period within which the individual would have been entitled to have an individual life insurance policy issued in accordance with subsection 9 or 10 and before such an individual policy has become effective, the amount of life insurance that the insured would have been entitled to have issued under the individual policy is payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.
12. Where active employment is a condition of insurance, a provision that an insured may continue coverage during the insured's total disability by timely payment to the policyholder of that portion, if any, of the premium that would have been required from the insured had total disability not occurred. The continuation shall be on a premium paying basis for a period of six months from the date on which the total disability started, but not beyond the earlier of (a) approval by the insurer of continuation of the coverage under any disability provision which the group policy may contain, or (b) the discontinuance of the group policy.

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 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.

26.1-33-13. Variable life contracts - Separate accounts. Any domestic life insurance company, including any domestic fraternal benefit society that operates on a legal reserve basis, may establish one or more separate accounts and may allocate thereto amounts, including proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance, and benefits incidental thereto, payable in fixed or variable amounts or both, subject to the following:

1. The income, gains, and losses, realized or unrealized from assets allocated to a separate account, must be credited to or charged against the account, without regard to other income, gains, or losses of the company.
2. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 3:
 - a. Amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by laws of this state governing the investments of life insurance companies.
 - b. Investments in a separate account or accounts may not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.
3. Except with the approval of the commissioner and under any conditions as to investments and other matters the commissioner may prescribe, which must recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.
4. Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to the separate account. Unless otherwise approved by the commissioner, the portion of the assets of the separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection 3 must be valued in accordance with the rules otherwise applicable to the company's assets.
5. Amounts allocated to a separate account are owned by the company, and the company may not be, nor hold itself out

to be, a trustee with respect to such amounts. To the extent provided under the applicable contracts, that portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to the account is not chargeable with liabilities arising out of any other business the company may conduct.

6. No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and its separate accounts unless, in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value, provided that a transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts if, in the commissioner's opinion, the transfers would not be inequitable.
7. To the extent the company determines it is necessary to comply with any applicable federal or state laws, the company, with respect to any separate account, including any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of the account, including special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the company, to manage the business of the account.

26.1-33-14. License required for variable life contracts. No company may deliver or issue for delivery in this state variable life insurance contracts unless it is licensed or organized to do a life insurance business in this state, and the commissioner is satisfied that the company's condition or method of operation in connection with the issuance of variable contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider, among other things, the history and financial condition of the company; the character, responsibility, and fitness of the officers and directors of the company; and the laws and rules under which the company is authorized in the state of domicile to issue variable life insurance contracts. If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the commissioner to have met the provisions of this section if it or the parent or the affiliated company meets these requirements.

26.1-33-15. Content of variable life contracts. Any variable life insurance contract delivered or issued for delivery in this state must contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of the variable benefits. Any contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, must state that the dollar amount will so vary and must contain on its first page a statement to the effect that the benefits under the contract are on a variable basis.

26.1-33-16. Policy provisions exceptions for variable life contracts. Except for subsections 2, 6, 7, 8, and 10 of section 26.1-33-05, and except as otherwise provided in sections 26.1-33-13 through 26.1-33-15, all pertinent provisions of this title apply to separate accounts and variable life insurance contracts. Any individual variable life insurance contract, delivered or issued for delivery in this state, must contain grace, reinstatement, and nonforfeiture provisions appropriate to the contract. The reserve liability for variable contracts must be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

26.1-33-17. Rulemaking authority relating to variable life contracts. The commissioner may adopt reasonable rules to implement sections 26.1-33-13 through 26.1-33-16.

26.1-33-18. Required provisions relating to lapsing policyholder. In the case of policies issued after December 31, 1978, no life insurance policy, except as stated in section 26.1-33-28, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with section 26.1-33-27:

1. In the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of the due date, of the amount as may be hereinafter specified. In lieu of the stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.
2. Upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of

- industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of the amount as may be hereinafter specified.
3. A specified paid-up nonforfeiture benefit becomes effective as specified in the policy unless the person entitled to make the election elects another available option not later than sixty days after the due date of the premium in default.
 4. If the policy has become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, then the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of the amount as may be hereinafter specified.
 5. In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate or rates used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.
 6. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state. An explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy. If a detailed statement of the method of computation of the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the commissioner. A statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the

policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

26.1-33-19. Minimum cash surrender value.

1. Any cash surrender value available under a life insurance policy in the event of default in a premium payment due on any policy anniversary, whether or not required by section 26.1-33-18, must be an amount not less than the excess, if any, of the present value, on the anniversary, of the future guaranteed benefits which would have been provided by the policy, including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the adjusted premiums as defined in sections 26.1-33-21 through 26.1-33-24 corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the policy.
2. Any life insurance policy issued on or after the operative date of section 26.1-33-24, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection 1 must be an amount not less than the sum of the cash surrender value as defined in that subsection for an otherwise similar policy issued at the same age without the rider or supplemental policy provision and the cash surrender value as defined in that subsection for a policy which provides only the benefits otherwise provided by the rider or supplemental policy provision.
3. For any family life insurance policy issued on or after the operative date of section 26.1-33-24, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value referred to in subsection 1 must be an amount not less than the sum of the cash surrender value as defined in that subsection for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in that subsection for a policy which provides only the benefits

otherwise provided by such term insurance on the life of the spouse.

4. Any cash surrender value available within thirty days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by section 26.1-33-18, must be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

26.1-33-20. Minimum paid-up nonforfeiture benefit. Any paid-up nonforfeiture benefit available under a life insurance policy in the event of default in a premium payment due on any policy anniversary must be such that its present value as of the anniversary must be at least equal to the cash surrender value then provided by the policy or, if none is provided, that cash surrender value which would have been required by sections 26.1-33-18 through 26.1-33-28 in the absence of the condition that premiums must have been paid for at least a specified period.

26.1-33-21. Definition of adjusted premiums used in obtaining minimum cash surrender value.

1. Except as provided in subsection 3, the adjusted premiums for any policy must be calculated on an annual basis and must be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all the adjusted premiums equals the sum of:
 - a. The then present value of the future guaranteed benefits provided by the policy.
 - b. Two percent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy.
 - c. Forty percent of the adjusted premium for the first policy year.
 - d. Twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life insurance policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

In applying the percentages specified in subdivisions c and d, no adjusted premium may be deemed to exceed four percent of the amount of insurance or equivalent uniform amount. The date of issue of a policy for the purpose of this section is the date as of which the rated age of the insured is determined.

2. In the case of a life insurance policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount of insurance for the purpose of this section is the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue of the policy as do the benefits under the policy.
3. The adjusted premiums for any life insurance policy providing term insurance benefits by rider or supplemental policy provision must be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for the term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) must be calculated separately and as specified in subsections 1 and 2 except that, for the purposes of subdivisions b, c, and d of subsection 1, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) must be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).
4. This section does not apply to life insurance policies issued on or after the operative date of section 26.1-33-24.

26.1-33-22. Mortality and interest bases for adjusted premiums and present values - Ordinary insurance. In the case of ordinary policies, all adjusted premiums and present values referred to in sections 26.1-33-18 through 26.1-33-28 must be calculated on the basis of the commissioners' 1958 standard ordinary mortality table and the rate or rates of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. No such rate of interest may exceed five and one-half percent per year, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per year may be used. For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as

a nonforfeiture benefit, the rates of mortality assumed may be not greater than those shown in the commissioners' 1958 extended term insurance table. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner. This section does not apply to ordinary life insurance policies issued on or after the operative date of section 26.1-33-24.

26.1-33-23. Mortality and interest bases for adjusted premiums and present values - Industrial insurance. In the case of industrial policies, all adjusted premiums and present values referred to in sections 26.1-33-18 through 26.1-33-28 must be calculated on the basis of the commissioners' 1961 standard industrial mortality table and the rate or rates of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. No such rate of interest may exceed five and one-half percent per year, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per year may be used. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not greater than those shown in the commissioners' 1961 industrial extended term insurance table. For insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner. This section does not apply to industrial policies issued on or after the operative date of section 26.1-33-24.

26.1-33-24. Determination of minimum values.

1. Except as provided in subsection 7, the adjusted premiums for any policy must be calculated on an annual basis and must be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums equals the sum of:
 - a. The then present value of the future guaranteed benefits provided for by the policy.
 - b. One percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

- c. One hundred twenty-five percent of the nonforfeiture net level premium as hereinafter defined.

In applying the percentage specified in subdivision c, no nonforfeiture net level premium may exceed four percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section is the date as of which the rated age of the insured is determined.

2. The nonforfeiture net level premium is equal to the present value, at the date of issue of the life insurance policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.
3. In the case of life insurance policies that cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values must initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.
4. Except as otherwise provided in subsection 7, the recalculated future adjusted premiums for any life insurance policy must be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums equals the excess of (a) the sum of the then present value of the then future guaranteed benefits provided for by the policy, and the additional expense allowance, if any, over (b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

5. The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of (a) one percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (b) one hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.
6. The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the sum of:
 - a. The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and
 - b. The present value of the increase in future guaranteed benefits provided for by the policy; by
 - c. The present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.
7. Notwithstanding any other provision of this section to the contrary, in the case of a life insurance policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide the higher uniform amounts of insurance on the standard basis.
8. All adjusted premiums and present values referred to in sections 26.1-33-18, 26.1-33-19, 26.1-33-21 through 26.1-33-26, and 26.1-33-28 must for all ordinary life insurance policies be calculated on the basis of (a) the commissioners' 1980 standard ordinary mortality table, or (b) at the election of the company for any one or more specified plans of life insurance, the commissioners' 1980 standard ordinary mortality table with ten-year select mortality factors; must for all policies of industrial insurance be calculated on the basis of the commissioners' 1961 standard industrial mortality table; and must for all policies issued in a particular calendar year be

calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year. However:

- a. At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.
- b. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by section 26.1-33-18, must be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.
- c. A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.
- d. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners' 1980 extended term insurance table for ordinary life insurance policies and not more than the commissioners' 1961 industrial extended term insurance table for industrial insurance policies.
- e. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the tables.
- f. Any ordinary mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners' 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners' 1980 extended term insurance table.
- g. Any industrial mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners'

1961 standard industrial mortality table or the commissioners' 1961 industrial extended term insurance table.

9. The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in sections 26.1-35-01 through 26.1-35-10, rounded to the nearer one quarter of one percent.
10. Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.
11. This section applies to all life insurance policies issued after December 31, 1988, unless the insurance company, by written notice filed with the commissioner, opts for an earlier operative date.

26.1-33-25. Determination of minimum value of policies with future premium determination - Indeterminable value. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on their estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in sections 26.1-33-18 through 26.1-33-24, then:

1. The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by sections 26.1-33-18 through 26.1-33-24;
2. The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and
3. The cash surrender values and paid-up nonforfeiture benefits provided by the plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of sections 26.1-33-18 through 26.1-33-28, as determined by rules adopted by the commissioner.

26.1-33-26. Benefits on default off the anniversary - Exempted benefits. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, must

be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in sections 26.1-33-19 through 26.1-33-24 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, may be not less than the amounts used to provide the additions. Notwithstanding section 26.1-33-19, additional benefits payable (1) in the event of death or dismemberment by accident or accidental means; (2) in the event of total and permanent disability; (3) as reversionary annuity or deferred reversionary annuity benefits; (4) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, sections 26.1-33-18 through 26.1-33-28 would not apply; (5) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six years, is uniform in amount after the child's age is one year, and has not become paid-up by reason of the death of a parent of the child; and (6) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, must be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by sections 26.1-33-18 through 26.1-33-28, and no such additional benefits may be required to be included in any paid-up nonforfeiture benefits.

26.1-33-27. Determination of minimum values after January 1, 1987.

1. Any cash surrender value available under a life insurance policy in the event of default in a premium payment due on any policy anniversary must be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of (a) the greater of zero and the basic cash value hereinafter specified and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.
2. The basic cash value is equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors corresponding to premiums that would have fallen due on and after such anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in section 26.1-33-19 or 26.1-33-21, whichever is applicable, shall be the same as are the effects specified in section 26.1-33-19 or 26.1-33-21, whichever is applicable, on the cash surrender values defined in that section.

3. The nonforfeiture factor for each policy year is an amount equal to a percentage of the adjusted premium for the policy year, as defined in section 26.1-33-21 or 26.1-33-24, whichever is applicable. Except as is required by subsection 4, the percentage:
 - a. Must be the same percentage for each policy year between the second policy anniversary and the later of the fifth policy anniversary and the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
 - b. Must be such that no percentage after the later of the two policy anniversaries specified in subdivision a may apply to fewer than five consecutive policy years.
4. No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in section 26.1-33-21 or 26.1-33-24, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.
5. All adjusted premiums and present values referred to in this section must for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with sections 26.1-33-18, 26.1-33-19, 26.1-33-21 through 26.1-33-26, and 26.1-33-28. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.
6. Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment must be determined in manners consistent with the manners specified for determining the analogous minimum amounts in sections 26.1-33-18 through 26.1-33-20, 26.1-33-24, and 26.1-33-26. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as items (1) through (6) in section 26.1-33-26 must conform with the principles of this section.
7. This section, in addition to all other applicable provisions of sections 26.1-33-18, 26.1-33-19, 26.1-33-21

through 26.1-33-26, and 26.1-33-28, applies to all policies issued on or after January 1, 1987.

26.1-33-28. Exemptions from nonforfeiture provisions. Sections 26.1-33-18 through 26.1-33-27 do not apply to:

1. Reinsurance.
2. Group insurance.
3. Pure endowment.
4. An annuity or reversionary annuity contract.
5. A term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy.
6. A policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in sections 26.1-33-21 through 26.1-33-24 is less than the adjusted premium so calculated on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy.
7. A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in sections 26.1-33-19 through 26.1-33-24, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year.
8. A policy delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of sections 26.1-33-18 through 26.1-33-28, the age of expiry for a joint term life insurance policy is the age of expiry of the oldest life.

26.1-33-29. Applicability of life policy simplification standards.

1. Except as provided in subsection 3, sections 26.1-33-29 through 26.1-33-32 apply to all individual and group life insurance policies, insurance certificates under group life insurance policies, and death benefit certificates issued by fraternal benefit societies filed after June 30,

1982. No policy may be delivered or issued for delivery in this state after June 30, 1986, unless the policy form has been approved by the commissioner or is permitted to be issued under sections 26.1-33-29 through 26.1-33-32. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by sections 26.1-33-29 through 26.1-33-32 need not be refiled for approval, but may continue to be delivered or issued for delivery in this state upon the filing with the commissioner of a list of the forms identified by form number and accompanied by a certificate as to each form in the manner provided in subsection 6 of section 26.1-33-30.

2. The commissioner may extend the dates in subsection 1.
3. Sections 26.1-33-29 through 26.1-33-32 do not apply to:
 - a. A policy that is a security subject to federal jurisdiction.
 - b. A group life insurance policy covering a group of one thousand or more lives at date of issue. However, this does not except any certificate issued pursuant to a group policy delivered or issued for delivery in this state.
 - c. A group annuity contract that serves as a funding vehicle for pension, profit sharing, or deferred compensation plans.
 - d. A form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates the form must be approved under sections 26.1-33-29 through 26.1-33-32.
 - e. The renewal of a policy delivered or issued for delivery prior to the dates the form must be approved under sections 26.1-33-29 through 26.1-33-32.
4. No other state law setting language simplification standards applies to a policy form.

26.1-33-30. Minimum life policy language simplification standards.

1. No policy form may be delivered or issued for delivery in this state, unless:
 - a. The text achieves a minimum score of forty on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection 3.

- b. It is printed, except for specification pages, schedules, and tables, in not less than ten-point type, one point leaded.
 - c. The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsement or rider.
 - d. It contains a table of contents or an index of the principal sections of the policy, if the policy has more than three thousand words printed or three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.
2. The commissioner may authorize a lower score than the Flesch reading ease score required in subdivision a of subsection 1 whenever the commissioner finds that a lower score:
 - a. Will provide a more accurate reflection of the readability of a policy form.
 - b. Is warranted by the nature of a particular policy form or type or class of policy forms.
 - c. Is caused by certain policy language which is drafted to conform to the requirements of any state law or rule, or agency interpretation.
 3. A Flesch reading ease test score is measured by the following method:
 - a. For policy forms containing ten thousand words or less of text, the entire form must be analyzed. For policy forms containing more than ten thousand words, the readability of two 2-hundred word samples per page may be analyzed instead of the entire form. The samples must be separated by at least twenty printed lines.
 - b. The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of one and fifteen thousandths.
 - c. The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of eighty-four and six-tenths.
 - d. The sum of the figures computed under subdivisions b and c subtracted from two hundred six and eight hundred thirty-five thousandths equals the Flesch reading ease score for the policy form.

- e. For purposes of subdivisions b, c, and d, the following procedures must be used:
- (1) A contraction, hyphenated word, or numbers and letters, when separated by spaces, are counted as one word.
 - (2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, is counted as a sentence.
 - (3) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.
4. As used in this section, "text" includes all printed matter except:
- a. The name and address of the insurer, the name, number, or title of the policy, the table of contents or index, captions and subcaptions, specification pages, schedules, and tables.
 - b. Any policy language drafted to conform to the requirements of any federal law, regulation, or agency interpretation, any policy language required by any collectively bargained agreement, any medical terminology, any words defined in the policy, and any policy language required by law or rule; provided, however, the insurer identifies the language or terminology excepted by this subdivision and certifies, in writing, that the language or terminology is entitled to be excepted by this subdivision.
5. The commissioner may approve any other reading test for use as an alternative to the Flesch reading ease test if the other test is comparable in result to the Flesch reading ease test.
6. Filings subject to this section must be accompanied by a certificate signed by an officer of the life insurance company or fraternal benefit society stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with subsection 2. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

7. At the option of the life insurance company or fraternal benefit society, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

26.1-33-31. Approval of life policy forms. A policy form meeting the requirements of subsection 1 of section 26.1-33-30 must be approved notwithstanding any other law which specifies the contents of a policy, if the policy form provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

26.1-33-32. Effect of life policy simplification standards on filed policies. Sections 26.1-33-29 through 26.1-33-31 do not negate any law of this state permitting the issuance of a policy form after it has been on file for the required time period and has not been disapproved by the commissioner.

26.1-33-33. Life policy transferable. A life insurance policy may pass by transfer, will, or succession to any person, whether that person has an insurable interest or not, and that person may recover upon the policy in accordance with the terms of the policy. An insured under a group life insurance policy, pursuant to agreement among the insured, the group policyholder, and the insurer, may make an assignment of all or any part of the incidents of ownership held by the insured under the policy, including any right to designate a beneficiary and any right to have an individual policy issued in case of termination of employment. An assignment, whether made prior to or subsequent to July 1, 1971, is valid for the purpose of vesting in the assignee all the incidents of ownership assigned, and entitles the insurer to deal with the assignee as the owner in accordance with the policy, but without prejudice to the insurer on account of any payment made or individual policy issued prior to receipt by the insurer of such notice as may be required by the policy.

26.1-33-34. Notice of transfer of life policy unnecessary - Exception. Notice to an insurer of a transfer or bequest of a life insurance policy is not necessary to preserve the validity of the policy unless notice is required by the policy.

26.1-33-35. Insurance in favor of corporation on life of corporate officer or employee - Powers of corporation. Whenever a domestic corporation causes to be insured the life of any director, officer, agent, or employee of the corporation, or whenever a domestic corporation is named as a beneficiary in or assignee of any life insurance policy, due authority to effect, assign, release, relinquish, convert, or surrender, or to change the beneficiary in, the policy, or to take any other or different action with reference to, the insurance, is sufficiently evidenced to the insurance company by a written statement to that effect signed by the president and the secretary or other corresponding officers of the corporation. The statement is binding upon the corporation and protects the insurance company

in any act done or suffered by it upon the faith of the notice without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings. No person may be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of the corporation on any corporate act touching the insurance.

26.1-33-36. Rights in life policies exempt from claims of creditors. The surrender value of any life insurance policy 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, is exempt absolutely from the claims of creditors of the insured. No creditor of the insured, and no court or officer of a court acting for any such creditors, may elect for the insured to have the life insurance policy surrendered or in anywise converted into money, and no life insurance policy or property right in the policy belonging to the holder, and no value thereof, may be subject to seizure under any process of any court under any circumstance.

26.1-33-37. Suicide no defense to life policy after one year. In any suit on a life insurance policy, it is no defense after the policy has been in force one year that the insured committed suicide, and any provision or stipulation to the contrary in the policy is void.

26.1-33-38. Measure of indemnity in life policy. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a life insurance policy is the sum fixed in the policy.

26.1-33-39. Life policy - When payable. A life insurance policy may be made payable on the death of the insured or on the insured's surviving a specified period, or periodically so long as the insured lives, or otherwise contingently on the continuance or termination of life.

26.1-33-40. Avails of life policy payable to deceased or to the deceased's heirs, personal representatives, or estate - Exemption - Distribution. The avails of a life insurance policy or of a contract payable by any mutual aid or benevolent society, when made payable to the deceased, to the personal representatives of the deceased, to the deceased's heirs, or to the deceased's estate, is not subject to the debts of the decedent upon the death of the insured or member of the society except by special contract. The avails must be inventoried as a part of the estate of the decedent and must be considered as part of the general assets of the estate. The insured may transfer the avails of the life insurance policy or contract either by will or by contract. Nothing contained in this section affects, in any manner, any life insurance policy or beneficiary certificate which is made payable to a designated person, including the spouse of the insured, or to persons or to members of a family designated as a class, such as "all children" or "all brothers and sisters", even though the members of the class are not designated by name; or permits any insured to dispose of the avails of a contract by a mutual or

fraternal society by will to anyone who could not be a beneficiary in the contract under the charter or bylaws of the society.

26.1-33-41. Designation of beneficiary not affected by wills law. A designation in accordance with the terms of any insurance, annuity, or endowment contract where the designation in any agreement issued or entered into by the insurance company in connection therewith, supplemental thereto, or in settlement thereof, or the designation under a thrift, pension, retirement, death benefit, stock bonus, or profit-sharing contract, plan, system, or trust, created by an employer for the exclusive benefit of some or all of the employer's employees, or their beneficiary, of a person to be a beneficiary, payee, or owner of any right, title, or interest thereunder upon the death of another, is not subject to or defeated or impaired by any law relating to the signing and attestation of wills, even though the designation is revocable with the rights of the beneficiary, payee, or owner, or otherwise subject to defeasance.

26.1-33-42. Designation of trustee as beneficiary - Prior existence of will not required - Payments - Discharge.

1. Under section 26.1-33-41, it is permissible to designate as beneficiary, payee, or owner, a trustee named in any inter vivos or testamentary trust whether or not such will (or codicil) is in existence at the date of such designation. It is not necessary to the validity of the trust that there be in existence a trust corpus other than the right to receive the benefits or to exercise the rights resulting from such a designation.
2. It is also permissible to designate as a beneficiary, payee, or owner, a trustee named or to be named in, or ascertainable under, the will of the designator. Benefits or rights resulting from such a designation are payable or transferable to the trustee upon admission of the will (or codicil) to probate. Upon the payment of benefits to the trustee, the benefits must be held, administered, and disposed of in accordance with the terms of the testamentary trust created by the will (or codicil). Payment of the benefits does not cause the benefits or rights to be included in the property administered as part of the designator's estate as subject to the claims of creditors.
3. If a trustee is designated pursuant to this section and no qualified trustee makes claim to the benefits or rights resulting from the designation within one year of the death of the designator, or if it is satisfactory to the person obligated to make the payment or transfer as furnished within the one-year period that there is or will be no trustee to receive the proceeds, payment or transfer must be made to the person or representative of the designator, unless otherwise provided by the designation

or other controlling agreement made during the lifetime of the designator.

4. The payment of the benefits due or a transfer of the rights given under a designation pursuant to this section and the receipt of the payment or transfer executed by the trustee or other authorized payee constitutes a full discharge and acquittance of the person or institution obligated to make payment or transfer.

26.1-33-43. **Commingling of death benefits with trust assets.** Death benefits held in trust may be commingled with any other assets which may properly come into the trust. Sections 26.1-33-41 and 26.1-33-42 do not invalidate previous life insurance policy beneficiary designations naming trustees of trusts established by will.

SECTION 11. Chapter 26.1-34 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-34-01. **Required annuity contract provisions relating to cessation of payment of considerations by contractholder.** In the case of annuity contracts issued after June 30, 1979, unless the company, by written notice filed with the commissioner, opted for an earlier operative date, no annuity contract, except as stated in section 26.1-34-10, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder upon cessation of payment of considerations under the contract:

1. Upon cessation of payment of considerations under an annuity contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08.
2. If an annuity contract provides for a lump-sum settlement at maturity, or at any other time, then upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in sections 26.1-34-03, 26.1-34-04, 26.1-34-06, and 26.1-34-08. The company shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand for the benefit with surrender of the contract.
3. A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the annuity contract, together with sufficient information to determine the amounts of the benefits.

4. A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the annuity contract are not less than the minimum benefits required by any law of this state and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment is relieved of any further obligation under the contract.

26.1-34-02. Minimum nonforfeiture amount defined. The minimum values as specified in sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section:

1. With respect to annuity contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to such time at a rate of interest of three percent per year of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per year and the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount not less than zero and must equal the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents for each consideration credited to the contract during that contract year. The percentages of net considerations must be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the

preceding sentence, the percentage must be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.

2. With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts must be calculated on the assumption that considerations are paid annually in advance and must be defined as for contracts with flexible considerations which are paid annually, with two exceptions:
 - a. The portion of the net consideration for the first contract year to be accumulated is the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.
 - b. The annual contract charge is the lesser of (a) thirty dollars or (b) ten percent of the gross annual considerations.
3. With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount must equal ninety percent and the net consideration must be the gross consideration less a contract charge of seventy-five dollars.

26.1-34-03. Value of paid-up annuity benefit to be at least equal to minimum nonforfeiture amount. Any paid-up annuity benefit available under an annuity contract must be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. The present value must be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

26.1-34-04. Cash surrender benefit to be at least equal to value of paid-up annuity benefit. For annuity contracts that provide cash surrender benefits, the cash surrender benefits available prior to maturity may not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract. The present value must be

calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. A cash surrender benefit may not be less than the minimum nonforfeiture amount at that time. The death benefit under the contracts must at least equal the cash surrender benefit.

26.1-34-05. Minimum value of paid-up annuity on cessation of payment of considerations, where cash surrender benefits not provided. For annuity contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of the portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity. The present value must be calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, the present values must be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. The present value of a paid-up annuity benefit may not be less than the minimum nonforfeiture amount at that time.

26.1-34-06. Definition of maturity date. For the purpose of determining the benefits calculated under sections 26.1-34-04 and 26.1-34-05, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is deemed to be the latest date for which election is permitted by the contract, but may not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

26.1-34-07. Disclosure where annuity contract does not provide cash surrender or death benefits. Any annuity contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amounts prior to the commencement of any annuity payments must include a statement in a prominent place in the contract that such benefits are not provided.

26.1-34-08. Benefits on cessation of payment of considerations off the anniversary. Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary, under any annuity contract with fixed scheduled considerations, must be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract

year in which cessation of payment of considerations under the contract occurs.

26.1-34-09. Minimum nonforfeiture benefits for annuity contract providing both annuity and life insurance benefits - Excepted benefits. For any annuity contract that provides within the same contract, by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits must equal the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, must be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by sections 26.1-34-01 through 26.1-34-09. The inclusion of such additional benefits may not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, or death benefits.

26.1-34-10. Exemptions from annuity nonforfeiture provisions. Sections 26.1-34-01 through 26.1-34-09 do not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code, as amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract delivered outside this state.

26.1-34-11. Variable annuities authorized - Application of variable life policy sections - Rulemaking authority. Any domestic life insurance company, including any domestic fraternal benefit society which operates on a legal reserve basis, may establish one or more separate accounts and may allocate thereto amounts, including proceeds applied under optional modes of settlement or under dividend options, to provide for annuities, and benefits incidental thereto, payable in fixed or variable amounts or both, subject to the requirements of subsections 1 through 7 of section 26.1-33-13. No company may deliver or issue for delivery in this state variable contracts unless it is licensed or organized to do an annuity business in this state. Except for the requirement that an individual variable life insurance contract contain certain provisions, sections 26.1-33-14, 26.1-33-15, and 26.1-33-16 apply to

variable annuities authorized by this section. The commissioner may adopt reasonable rules to implement this section.

SECTION 12. Chapter 26.1-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-35-01. Commissioner to annually value liabilities for life policies and annuities. The commissioner shall annually value, or cause to be valued, the reserve liabilities, in this chapter referred to as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of the reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net level premium method or other, used in the calculation of the reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction where the valuation complies with the minimum standards provided in this chapter, if the official of that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

26.1-35-02. Minimum standards of valuation for life or accident insurance. The minimum standards for the valuation of all life or accident insurance policies issued prior to July 1, 1977, are those provided by sections 26-03-33, 26-03-34, and 26-10-01 as they existed on June 30, 1977. Except as otherwise provided in sections 26.1-35-03 and 26.1-35-04, the minimum standard for the valuation of all life or accident insurance policies and contracts issued after June 30, 1977, is the commissioners' reserve valuation methods defined in sections 26.1-35-05, 26.1-35-06, and 26.1-35-09; five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies and contracts, other than annuity and pure endowment contracts, and the following tables:

1. For all policies of ordinary life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the commissioners' 1958 standard ordinary mortality table for policies issued on or after the operative date of section 26.1-33-22 and prior to the earlier of a specified date filed by a company with the commissioner in a written notice of the company's election to comply with this chapter or January 1, 1989, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this chapter may be calculated

according to an age not more than six years -younger than the actual age of the insured; and for policies issued on or after the earlier of a specified date filed by a company with the commissioner in a written notice of the company's election to comply with this chapter or January 1, 1989:

- a. The commissioners' 1980 standard ordinary mortality table;
 - b. At the election of the company for any one or more specified plans of life insurance, the commissioners' 1980 standard ordinary mortality table with ten-year select mortality factors; or
 - c. Any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies.
2. For all policies of industrial life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the commissioners' 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies.
 3. For total and permanent disability benefits in or supplementary to policies or contracts, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies. The table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.
 4. For accidental death benefits in or supplementary to policies or contracts, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies. The table must be combined with a mortality table permitted for calculating the reserves for life insurance policies.

5. For group life insurance, life insurance issued on the substandard basis and other special benefits, any tables that may be approved by the commissioner.

26.1-35-03. Minimum standards of valuation for annuities. Except as provided in section 26.1-35-04, the minimum standards for the valuation of all individual annuity and pure endowment contracts, and for all annuities and pure endowments purchased under group annuity and pure endowment contracts, must be the commissioners' reserve valuation methods defined in sections 26.1-35-05 and 26.1-35-06 and the following tables and interest rates:

1. For individual single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts, the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.
2. For individual annuity and pure endowment contracts, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts, the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts.
3. For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts, the 1971 group annuity mortality table or any group annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

26.1-35-04. Determination of standard for valuation - Interest rates. The calendar year statutory valuation interest rates as defined in this section are:

1. The interest rates used in determining the minimum standard for the valuation of:
 - a. All life insurance policies issued in a particular calendar year, on or after the earlier of a specified date filed by a company with the commissioner in a written notice of the company's election to comply with this chapter or January 1, 1989.
 - b. All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984.
 - c. All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts.
 - d. The net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.
2. The calendar year statutory valuation interest rates, I, must be determined as follows and the results rounded to the nearer one-quarter of one percent:
 - a. For life insurance:

$$I = .03 + W (R_1 - .03) + \frac{W}{2} (R_2 - .09)$$

- b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W (R - .03)$$

where R_1 is the lesser of R and $.09$, R_2 is the greater of R and $.09$, R is the reference interest rate defined in this section, and W is the weighting factor defined in this section.

- c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subdivision b, the formula for life insurance stated in subdivision a applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subdivision b applies to annuities and guaranteed interest contracts with guarantee duration of ten years or less.

- d. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subdivision b applies.
- e. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subdivision b applies.

However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the policies must equal the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 by using the reference interest rate defined for 1979, and must be determined for each subsequent calendar year regardless of when section 26.1-33-26 becomes operative.

- 3. The weighting factors referred to in the formulas in subsection 2 are given in the following tables:
 - a. The weighting factors for life insurance are:

Guarantee Duration	Weighting Factors
10 years or less	.50
More than 10 years, but not more than 20 years	.45
More than 20 years	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy.

- b. The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is eighty-hundredths.

c. The weighting factors for other annuities and for guaranteed interest contracts, except as stated in subdivision b, are as specified in paragraphs 1, 2, and 3, according to the requirements and definitions in paragraphs 4, 5, and 6:

- (1) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration	Weighting Factor for Plan Type		
	A	B	C
5 years or less	.80	.60	.50
More than 5 years, but not more than 10 years	.75	.60	.50
More than 10 years, but not more than 20 years	.65	.50	.45
More than 20 years	.45	.35	.35

- (2) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in paragraph 1 increased by
- | | | | |
|--|-----|-----|-----|
| | .15 | .25 | .05 |
|--|-----|-----|-----|

- (3) For annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in paragraph 1 or derived in paragraph 2 increased by
- | | | | |
|--|-----|-----|-----|
| | .05 | .05 | .05 |
|--|-----|-----|-----|

- (4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.
- (5) The plan type as used in the tables in this subsection is defined as follows:
 - (a) Plan Type A: At any time the policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, (2) without such adjustment but in installments over five years or more, (3) as an immediate life annuity, or (4) no withdrawal permitted.
 - (b) Plan Type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, (2) without such adjustment but in installments over five years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.
 - (c) Plan Type C: The policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.
- (6) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either

an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. An issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract. A change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

4. The reference interest rate referred to in subsection 2 is defined as follows:
 - a. For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year next preceding the year of issue, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
 - b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or year of purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
 - c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision b with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.

- d. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision b with guaranteed duration of ten years or less, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
 - e. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
 - f. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision b the average over a period of twelve months, ending on June thirtieth of the calendar year of the change in the fund, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
5. If Moody's corporate bond yield average - monthly average corporates is no longer published by Moody's investors service, incorporated, or if the national association of insurance commissioners determines that Moody's corporate bond yield average - monthly average corporates as published by Moody's investors service, incorporated is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by rule adopted by the commissioner, may be substituted.

26.1-35-05. Reserves by commissioners' reserve valuation method.

1. Except as otherwise provided in sections 26.1-35-06 and 26.1-35-09, reserves according to the commissioners' reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, must be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided by the policies, over the present value of any future modified net premiums for the policies. The modified net premiums must be the uniform percentage of

the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums equals the sum of the present value of the benefits provided by the policy and the excess of subdivision a over subdivision b as follows:

- a. A net level annual premium equal to the present value, at the date of issue, of the benefits provided after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due; provided, however, that the net level annual premium may not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of the policy.
 - b. A net one-year term premium for the benefits provided in the first policy year.
2. For any life insurance policy issued after December 31, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, which is defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, must, except as otherwise provided in section 26.1-35-09, be the greater of the reserve as of such policy anniversary calculated as described in this section and the reserve as of such policy anniversary calculated as described in this section, but with (a) the value defined in subdivision a of subsection 1 being reduced by fifteen percent of the amount of such excess first year premium; (b) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (c) the policy being assumed to mature on such date as an endowment; and (d) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in sections 26.1-35-02 and 26.1-35-04 must be used.
3. Reserves according to the commissioners' reserve valuation method for: (a) life insurance policies providing a varying amount of insurance or requiring the payment of varying premiums; (b) group annuity and pure endowment

contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code, as amended; (c) disability and accidental death benefits in all policies and contracts; and (d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, must be calculated by a method consistent with the principles of this section.

26.1-35-06. Reserves by commissioners' annuity reserve method. This section applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code of 1954, as amended.

Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, must be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contracts, that become payable prior to the end of such respective contract year. The future guaranteed benefits must be determined by using the mortality tables, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

26.1-35-07. Minimum aggregate reserves for life policies issued after June 30, 1977. A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued after June 30, 1977, may not be less than the aggregate reserves calculated in accordance with the methods set forth in sections 26.1-35-05, 26.1-35-06, and 26.1-35-09 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

26.1-35-08. Calculation of minimum aggregate reserves by other standards. Reserves for all policies and contracts issued prior to July 1, 1977, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves

for the policies and contracts than the minimum reserves required by the laws in effect on June 30, 1977.

Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after July 1, 1977, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this chapter, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, may not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies and contracts. Any company that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this chapter may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this chapter.

26.1-35-09. Minimum reserve where net premium exceeds gross premium.

1. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve on the policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in sections 26.1-35-02 and 26.1-35-04.
2. For any life insurance policy issued after December 31, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, subsection 1 must be applied as if the method actually used in calculating the reserve for the policy was the method described in section 26.1-35-05, ignoring subsection 2 of that section. The minimum reserve at each policy anniversary must be the greater of the minimum reserve calculated in accordance with section 26.1-35-05, including subsection 2 of that section, and the minimum reserve calculated in accordance with this section.

26.1-35-10. Future premium determination. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in sections 26.1-35-05, 26.1-35-06, and 26.1-35-09, the reserves which are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of this chapter, as determined by rules adopted by the commissioner.

SECTION 13. Chapter 26.1-36 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-36-01. Scope. No section of this chapter applies to or affects (1) any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group insurance policy, except when the section refers to a blanket or group insurance policy; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

26.1-36-02. "Accident and health insurance policy" defined. "Accident and health insurance policy" includes any contract policy insuring against loss resulting from sickness or bodily injury, or death by accident, or both.

26.1-36-03. Form of policy.

1. No accident and health insurance policy may be delivered or issued for delivery to any person in this state unless:
 - a. The entire money and other considerations for the policy are expressed in the policy.
 - b. The time at which the insurance takes effect and terminates is expressed in the policy.
 - c. The policy purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who is deemed the policyholder, any two or more eligible members of that family, including spouse, dependent children or any children under a

specified age which may not exceed nineteen years, and any other person dependent upon the policyholder.

- d. The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in lightfaced type of a style in general use, the size of which is uniform and not less than ten point with a lowercase unspaced alphabet length not less than one hundred twenty point. The "text" must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.
 - e. The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in section 26.1-36-04 are printed at the insurer's option, either included with the benefit provisions to which they apply, or under an appropriate caption such as "EXCEPTIONS" or "EXCEPTIONS AND REDUCTIONS". If an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction must be included with the benefit provision to which it applies.
 - f. Each form, including riders and endorsements, must be identified by a form number in the lower left-hand corner of the first page thereof.
 - g. It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.
2. If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the insurance department of that state has advised the commissioner that the policy is not subject to approval or disapproval by that official, the commissioner may by ruling require that the policy meet the standards set forth in subsection 1 and in section 26.1-36-04.

26.1-36-04. Accident and health policy provisions.

1. Except as provided in subsection 3, each accident and health insurance policy delivered or issued for delivery to any person in this state must contain provisions described in this section. The provisions contained in

any policy may not be less favorable in any respect to the insured or the beneficiary.

- a. A provision that the policy, including the endorsements and the attached papers, if any, constitutes the entire insurance contract and that no change in the policy is valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to the policy.
- b. A provision that no agent has authority to change the policy or to waive any of its provisions.
- c. A provision that the validity of the policy may not be contested except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that the validity of the policy may not be contested on the basis of a statement made relating to insurability by any person covered under the policy after the insurance has been in force for two years during the person's lifetime unless the statement is contained in a written instrument signed by the person making the statement; provided, however, that no such provision precludes the assertion at any time of defenses based upon the person's ineligibility for coverage under the policy.
- d. A provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. Any such exclusion or limitation may only apply to a preexisting disease or physical condition which first manifested itself in the five years immediately prior to the effective date of the person's coverage. The exclusion or limitation may not apply to loss incurred or disability commencing after the end of the two-year period commencing on the effective date of the person's coverage.
- 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.

- f. A provision that if any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, reinstates the policy; provided, however, that if the insurer or the agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of the application by the insurer or, lacking the approval, upon the forty-fifth day following the date of the conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The policy must provide that the reinstated policy covers only loss resulting from an accidental injury sustained after the date of reinstatement and loss due to any sickness that begins more than ten days after the date. The policy must provide that in all other respects the insured and insurer have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed thereon or attached thereto in connection with the reinstatement. The provision may include a statement that any premium accepted in connection with a reinstatement will be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement. This statement may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.
- g. A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within this time does not invalidate nor reduce any claim if it is shown not to have been reasonably possible to give the notice and that notice was given as soon as was reasonably possible.
- h. A provision that the insurer will furnish to the person making claim, or to the policyholder for delivery to such person, the forms usually furnished for filing proof of loss. If the forms are not furnished before the expiration of fifteen days after the insurer receives notice of any claim under the policy, the person making the claim is deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in

the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claims are made.

- i. A provision that in the case of claim for loss of time for disability, written proof of loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, and that subsequent written proof of continuance of the disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of loss must be furnished to the insurer within ninety days after the date of loss. Failure to furnish the proof within this time does not invalidate nor reduce any claim if it was not reasonably possible to furnish the proof within that time, provided the proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required.
- j. A provision that all benefits payable under the policy other than benefits for loss of time will be payable not more than sixty days after receipt of proof, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid as soon as possible after receipt of proof of loss.
- k. A provision that benefits for loss of life of the person insured will be payable to the beneficiary designated by the insured person. However, if the policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms. In either case, payment of these benefits is subject to the provisions of the policy in the event no such designated or specified beneficiary is living at the death of the insured person. All other benefits of the policy are payable to the insured person. The policy may also provide that if any benefit is payable to the estate of a person, or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay the benefit, up to an amount not exceeding five thousand dollars, to any relative by blood or connection by marriage of the person deemed by the insurer to be equitably entitled to the benefit.

1. A provision that the insurer may examine the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy and also may make an autopsy in case of death where the autopsy is not prohibited by law.
 - m. A provision that no action may be brought to recover on the policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of the policy and that no such action may be brought at all unless brought within three years from the expiration of the time which proof of loss is required by the policy.
2. Except as provided in subsection 3, no accident and health insurance policy delivered or issued for delivery to any person in this state may contain provisions respecting the matters described in this subsection unless the provisions in the policy are not less favorable in any respect to the insured or the beneficiary.
 - a. A provision that if the insured is injured or contracts sickness after having changed occupation to one classified by the insurer as more hazardous than that stated in the policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured changes occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon receipt of proof of the change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of proof, whichever is the more recent. The provision must provide that the classification of occupational risk and the premium rates will be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time the policy was issued; but if the filing was not required, then the classification of occupational risk and the premium rates will be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.
 - b. A provision that if the age of the insured has been misstated, all amounts payable under the policy will

be such as the premium paid would have purchased at the correct age.

- c. A provision that if an accident or health or accident and health policy or policies previously issued by the insurer to the insured are in force concurrently therewith, making the aggregate indemnity for the type of coverage or coverages, in excess of the maximum limit of indemnity or indemnities, the excess insurance is void and all premiums paid for the excess will be returned to the insured or to the insured's estate. In lieu of this type of provision the policy may provide that insurance effective at any one time on the insured under the policy and a like policy or policies in the insurer is limited to the one such policy elected by the insured, the insured's beneficiary or the insured's estate, as the case may be, and the insurer will return all premiums paid for all other such policies.
- d. A provision that upon the payment of a claim under the policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.
- e. A provision that the insurer may cancel the policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, the cancellation is effective; and after the policy has been continued beyond its original term the insured may cancel the policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in the notice. The provision must provide that in the event of cancellation, the insurer will return promptly the unearned portion of any premium paid, and, if the insured cancels, the earned premium will be computed by the use of the short-rate table last filed in the state where the insured resided when the policy was issued. The provision must provide that if the insurer cancels, the earned premium shall be computed pro rata. The provision must provide that cancellation is without prejudice to any claim originating prior to the effective date of cancellation.
- f. A provision that any provision of the policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is amended to conform to the minimum requirements of such statutes.

- g. A provision that the insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.
- h. A provision that the insurer is not liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.
- i. A provision that if, with respect to a person covered under the policy, benefits for allowable expense incurred during a claim determination period under the policy together with benefits for allowable expense during such period under all other valid coverage exceed the total of the person's allowable expense during such period, the insurer is liable only for such proportionate amount of the benefits for allowable expense under the policy during such period as (1) the total allowable expense during such period bears to (2) the total amount of benefits payable during such period for such expense under the policy and all other valid coverage (without giving effect to this provision or to any "overinsurance provision" applying to such other valid coverage) less in both (1) and (2) any amount of benefits for allowable expense payable under other valid coverage which does not contain an overinsurance provision. The provision must provide that in no event does the provision operate to increase the amount of benefits for allowable expense payable under the policy with respect to a person covered under the policy above the amount which would have been paid in the absence of the provision. The provision must provide that the insurer may pay benefits to any insurer providing other valid coverage in the event of overpayment by such insurer, and any such payment discharges the liability of this insurer as fully as if the payment had been made directly to the insured, the insured's assignee, or the insured's beneficiary. The provision must provide that in the event that the insurer pays benefits to the insured, the insured's assignee, or the insured's beneficiary, in excess of the amount which would have been payable if the existence of other valid coverage had been disclosed, the insurer has a claim for relief against the insured, the insured's assignee, or the insured's beneficiary, to recover the amount which would not have been paid had there been a disclosure of the existence of the other valid coverage. The provision must provide that the amount of other valid coverage which is on a provision of service basis will be computed as the amount the

services rendered would have cost in the absence of such coverage. The provision must provide that:

- (1) "Allowable expense" means one hundred ten percent of any necessary, reasonable, and customary item of expense which is covered, in whole or in part, as a hospital, surgical, medical, or major medical expense under this policy or under any other valid coverage.
- (2) "Claim determination period" with respect to any covered person means the initial period, as provided in the policy, but not less than thirty days and each successive period of a like number of days, during which allowable expense covered under the policy is incurred on account of such person. The first period begins on the date when the first expense is incurred, and successive periods begin when successive expense is incurred after expiration of a prior period.

Or, in lieu thereof:

"Claim determination period" with respect to any covered person means the number of days, as provided in the policy but not less than thirty days during which allowable expense covered under the policy is incurred on account of such person.

- (3) "Overinsurance provision" means the provision which may reduce an insurer's liability because of the existence of benefits under other valid coverage.

This type of provision may be inserted in all policies providing hospital, surgical, medical, or major medical benefits. The insurer may make this provision applicable to either or both: other valid coverage with other insurers; and, except for individual policies individually underwritten, other valid coverage with the same insurer. The insurer must include in the provision a definition of "other valid coverage". The definition may include hospital, surgical, medical, or major medical benefits provided by group, blanket, or franchise coverage, individual and family-type coverage, blue cross-blue shield coverage, and other prepayment plans, group practice, and individual practice plans, uninsured benefits provided by labor-management trustee plans, or union welfare plans, or by employer or employee benefit organizations, benefits provided under governmental programs, workmen's compensation insurance, or any coverage required or provided by any other statute, and medical payments under automobile liability and

personal liability policies. Other valid coverage may not include payments made under third party liability coverage as a result of a determination of negligence. The insurer may require, as part of the proof of claim, the information necessary to administer the provision.

- j. A provision that after the loss-of-time benefit of the policy has been payable for ninety days, such benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed a percent of the insured's earned income as providing in the policy; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under the policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded an alternative percent of the insured's earned income as provided in the policy, at the time of the application, such higher percentage will be used in place of the original percent provided. The provision must provide that the adjusted loss-of-time benefit under the policy for any month will be only such proportion of the loss-of-time benefit otherwise payable under the policy as (1) the product of the insured's earned income and the original percent (or, if higher, the alternative percentage) bears to (2) the total amount of loss-of-time benefits payable for such month under the policy and all other valid loss-of-time coverage on the insured (without giving effect to the "overinsurance provision" in this or any other coverage) less in both (1) and (2) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an "overinsurance provision". The provision must provide that in making the computation, all benefits and earnings will be converted to a consistent basis weekly if the loss-of-time benefit of the policy is payable weekly, or monthly if the benefit is payable monthly, or otherwise, based upon the time period. If the numerator of the foregoing ratio is zero or is negative, no benefit is payable. The provision must provide that in no event does the provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under the policy and all other valid loss-of-time coverage below the lesser of three hundred dollars and the total combined amount of loss-of-time benefits determined without giving effect to any "overinsurance provision", nor operate to increase the amount of benefits payable under the policy above the amount which would have been paid in the absence of the provision, nor take into account or

operate to reduce any benefit other than the loss-of-time benefit. The provision must provide that:

- (1) "Earned income", except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and the insured's average monthly earnings for a period of two years immediately preceding the commencement of the disability, and does not include any investment income or any other income not derived from the insured's vocational activities.
- (2) "Overinsurance provision" includes this type of provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.

This type of provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage must be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy must include a definition of "valid loss-of-time coverage" which may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance departments of this or any other state or of any other country or subdivision thereof, coverage provided for the insured pursuant to any disability benefits statute or any workmen's compensation or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved.

3. If any requirement of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from the policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.
4. The provisions that are subject to subsections 1 and 2, must be printed in the consecutive order of the requirements in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy is not in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.
5. A provision not subject to this section may not make a policy, or any portion of the policy, less favorable in any respect to the insured or to the beneficiary than any provision which is subject to this chapter.
6. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision that is not less favorable to the insured or the beneficiary than the provisions of this chapter and that is prescribed or required by the law of the state under which the insurer is organized. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

26.1-36-05. Group health policy or service contract standard provisions.

Neither a group health insurance policy nor a group health service contract may be delivered in this state unless it contains in substance the following provisions, or provisions that in the opinion of the commissioner are more favorable to the persons insured and more favorable to the policyholder or contractholder; provided, however, that subsections 5, 7, and 12 do not apply to credit accident and health insurance policies, that the standard provisions required for individual health insurance policies do not apply to group health insurance policies, and that if any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy or contract, the insurer shall omit from the policy or contract any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy or contract consistent with the coverage provided by the policy or contract:

1. A provision that the policyholder or contractholder 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 or contract continues in force, unless the policyholder or contractholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy or contract. The policy or contract may provide that the policyholder or contractholder is liable to the insurer for the payment of a pro rata premium for the time the policy or contract was in force during the grace period.
2. A provision that the validity of the policy or contract may not be contested except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that the validity of the policy or contract may not be contested on the basis of a statement made relating to insurability by any person covered under the policy or contract after the insurance has been in force for two years during the person's lifetime unless the statement is contained in a written instrument signed by the person making the statement; provided, however, that no such provision precludes the assertion at any time of defenses based upon the person's ineligibility for coverage under the policy or contract.
3. A provision that a copy of the application, if any, of the policyholder or contractholder will be attached to the policy or contract when issued, that all statements made by the policyholder or contractholder or by the persons insured are deemed representations and not warranties, and that no statement made by any insured person may be used in any contest unless a copy of the instrument containing the statement is or has been furnished to that person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative.
4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the individual's coverage.
5. A provision specifying the additional exclusions or limitations, if any, applicable under the policy or contract with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy or contract. Any such exclusion or limitation may only

apply to a disease or physical condition for which medical advice or treatment was received by the person during the twelve months prior to the effective date of the person's coverage. The exclusion or limitation may not apply to loss incurred or disability commencing after the earlier of the end of a continuance period of twelve months commencing on or after the effective date of the person's coverage during all of which the person has received no medical advice or treatment in connection with such disease or physical condition, or the end of the two-year period commencing on the effective date of the person's coverage.

6. If the premiums or benefits vary by age, a provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event the age of a covered person has been misstated. The provision must contain a clear statement of the method of adjustment to be used.
7. A provision that the insurer will issue to the policyholder or contractholder for delivery to each person insured a certificate setting forth a statement as to the insurance protection to which that person is entitled, to whom the insurance benefits are payable, and a statement as to any family member's or dependent's coverage.
8. A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy or contract. Failure to give notice within this time does not invalidate nor reduce any claim if it is shown not to have been reasonably possible to give the notice and that notice was given as soon as was reasonably possible.
9. A provision that the insurer will furnish to the person making claim, or to the policyholder or contractholder for delivery to such person, the forms usually furnished for filing proof of loss. If the forms are not furnished before the expiration of fifteen days after the insurer receives notice of any claim under the policy or contract, the person making the claim is deemed to have complied with the requirements of the policy or contract as to proof of loss upon submitting within the time fixed in the policy or contract for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claims are made.
10. A provision that in the case of claim for loss of time for disability, written proof of loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, and that subsequent written proof of continuance of the disability must be furnished to the insurer at such intervals as the

insurer may reasonably require, and that in the case of claim for any other loss, written proof of loss must be furnished to the insurer within ninety days after the date of loss. Failure to furnish the proof within this time does not invalidate nor reduce any claim if it was not reasonably possible to furnish the proof within that time, provided the proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required.

11. A provision that all benefits payable under the policy or contract other than benefits for loss of time will be payable not more than sixty days after receipt of proof, and that, subject to due proof of loss, all accrued benefits payable under the policy or contract for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid as soon as possible after receipt of proof of loss.
12. A provision that benefits for loss of life of the person insured will be payable to the beneficiary designated by the insured person. However, if the policy or contract contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy or contract terms. In either case, payment of these benefits is subject to the provisions of the policy or contract in the event no such designated or specified beneficiary is living at the death of the insured person. All other benefits of the policy or contract are payable to the insured person. The policy or contract may also provide that if any benefit is payable to the estate of a person, or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay the benefit, up to an amount not exceeding five thousand dollars, to any relative by blood or connection by marriage of the person deemed by the insurer to be equitably entitled to the benefit.
13. A provision that the insurer may examine the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy or contract and also may make an autopsy in case of death where the autopsy is not prohibited by law.
14. A provision that no action may be brought to recover on the policy or contract prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of the policy or contract and that no such action may be brought at all unless brought within three years from the expiration of the time which proof of loss is required by the policy or contract.

26.1-36-06. Group health policy and medical service contract options for drugs and chiropractic care. No insurance company or health service corporation may deliver, issue, execute, or renew any health insurance policy or medical service contract that includes coverage of medical benefits on a group, blanket, franchise, or association basis unless the insurer makes available, at the option of the insured or subscriber, the following coverages for which an additional premium may be charged:

1. All drugs and medicines prescribed by the provider of health services.
2. Services rendered and care administered by chiropractors licensed under chapter 43-06.

26.1-36-07. Health insurance coverage per newborn children - Scope of coverage - Notification of birth.

1. All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation which provides coverage for a family member of the insured or subscriber must, as to the family members' coverage, also provide that the health insurance benefits applicable for children are payable with respect to a newly born child of the insured or subscriber from the moment of birth.
2. The coverage for newly born children consists of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.
3. If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one days after the date of birth in order to have the coverage continue beyond the thirty-one-day period.

26.1-36-08. Group health policy and health service contract substance abuse coverage.

1. An insurance company or nonprofit health service corporation may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis where more than fifty persons are covered or are to be covered by the policy or contract and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage unless the policy or contract provides benefits, of the same type

offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of alcoholism, drug addiction, or other related illness, in a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health's rules pursuant thereto or as licensed under section 23-17.1-01, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness.

2. The benefits may be provided for inpatient treatment and treatment by partial hospitalization:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of seventy days of services covered under this section and section 26.1-36-09 in any calendar year.
 - b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred forty days of services covered under this section and section 26.1-36-09 in any calendar year.
 - c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization.

"Partial hospitalization" means that level and intensity of treatment that is greater than outpatient treatment, but less than inpatient treatment.

3. This section does not prevent any insurance company or nonprofit health service corporation from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

26.1-36-09. Group health policy and health service contract mental illness coverage.

1. An insurance company or nonprofit health service corporation may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis where more than fifty persons are covered or are to be covered by the policy or contract and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage unless the policy or contract provides benefits, of the same type

offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental illness and other related illness in a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health's rules pursuant thereto or as licensed under section 23-17.1-01, offering treatment for the prevention or cure of mental illness and other related illness.

2. The benefits may be provided for inpatient treatment and treatment by partial hospitalization:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of seventy days of services covered under this section and section 26.1-36-08 in any calendar year.
 - b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred forty days of services covered under this section and section 26.1-36-08 in any calendar year.
 - c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization.

"Partial hospitalization" means that level and intensity of treatment that is greater than outpatient treatment, but less than inpatient treatment.

3. This section does not prevent any insurance company or nonprofit health service corporation from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

26.1-36-10. Group health policy and health service contract coordination of benefit provisions. A group health insurance policy or a group health service contract may contain coordination of benefit provisions for the control of overinsurance. These provisions must be in accordance with appropriate guidelines set forth in rules adopted by the commissioner.

26.1-36-11. Accident and health policy provision denying insured right to employ doctor or enter hospital prohibited. Any provision in any accident or health insurance policy issued by any insurance company denying the insured, in case of accident or sickness, the right to consult or employ any doctor licensed to practice in this state the insured

may choose, or to enter any hospital or sanatorium organized and operating under the laws of this state the insured may select is void. The insurance company shall recognize any proof of claim duly certified by such doctor or hospital or sanatorium notwithstanding any provision contained in the policy.

26.1-36-12. Provisions prohibited in individual and group accident and health insurance policies and nonprofit health service contracts.

1. Any provision in any individual or group accident and health insurance policy or nonprofit health service contract issued by any insurance company or nonprofit health service corporation denying or prohibiting the insured or subscriber from assigning to the department of human services any rights to medical benefits coverage to which the insured or subscriber is entitled under the policy or contract is void. An individual or group insurance company or nonprofit health service corporation shall recognize the assignment of medical benefits coverage completed by the insured or subscriber, notwithstanding any provision contained in the policy or contract to the contrary.
2. Any individual or group provision in any accident and health insurance policy or nonprofit health service corporation contract issued by any insurance company or nonprofit health service corporation which limits or excludes payments of medical benefits coverage to or on behalf of the insured or subscriber if the insured or subscriber is eligible for medical assistance benefits under chapter 50-24.1 is void.

26.1-36-13. Applicability of accident and health policy simplification standards.

1. Except as provided in subsection 3, sections 26.1-36-13 through 26.1-36-16 apply to all individual and group accident and health insurance contracts, policies, plans, or agreements, insurance certificates under group accident and health insurance policies, and disability benefit certificates issued by fraternal benefit societies filed after June 30, 1982. No policy may be delivered or issued for delivery in this state after June 30, 1986, unless approved by the commissioner or permitted to be issued under sections 26.1-36-13 through 26.1-36-16. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by sections 26.1-36-13 through 26.1-36-16 need not be refiled for approval, but may continue to be delivered or issued for delivery in this state upon the filing with the commissioner of a list of the forms identified by form number and accompanied by a certificate as to each such form in the manner provided in subsection 6 of section 26.1-36-14.

2. The commissioner may extend the dates in subsection 1.
3. Sections 26.1-36-13 through 26.1-36-16 do not apply to:
 - a. A policy that is a security subject to federal jurisdiction.
 - b. Any group policy covering a group of one thousand or more lives at date of issue. However, this does not except any certificate issued pursuant to a group policy delivered or issued for delivery in this state.
 - c. A form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under sections 26.1-36-13 through 26.1-36-16.
 - d. The renewal of a policy delivered or issued for delivery prior to the dates the forms must be approved under sections 26.1-36-13 through 26.1-36-16.
4. No other state law setting language simplification standards applies to a policy form.

26.1-36-14. Minimum accident and health policy language simplification standards.

1. No policy form may be delivered or issued for delivery in this state unless:
 - a. The text achieves a minimum score of forty on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection 3.
 - b. It is printed, except for specification pages, schedules, and tables, in not less than ten-point type, one point leaded.
 - c. The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsement or rider.
 - d. It contains a table of contents or an index of the principal sections of the policy, if the policy has more than three thousand words printed or three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.
2. The commissioner may authorize a lower score than the Flesch reading ease score required in subdivision a of subsection 1 whenever the commissioner finds that a lower score:

- a. Will provide a more accurate reflection of the readability of a policy form.
 - b. Is warranted by the nature of a particular policy form or type or class of policy forms.
 - c. Is caused by certain policy language which is drafted to conform to the requirements of any state law or rule, or agency interpretation.
3. A Flesch reading ease test score is measured by the following method:
- a. For policy forms containing ten thousand words or less of text, the entire form must be analyzed. For policy forms containing more than ten thousand words, the readability of two 2-hundred word samples per page may be analyzed instead of the entire form. The samples must be separated by at least twenty printed lines.
 - b. The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of one and fifteen thousandths.
 - c. The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of eighty-four and six-tenths.
 - d. The sum of the figures computed under subdivisions b and c subtracted from two hundred six and eight hundred thirty-five thousandths equals the Flesch reading ease score for the policy form.
 - e. For purposes of subdivisions b, c, and d, the following procedures must be used:
 - (1) A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one word.
 - (2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence.
 - (3) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

4. As used in this section, "text" includes all printed matter except:
 - a. The name and address of the insurer, the name, number, or title of the policy, the table of contents or index, captions and subcaptions, specification pages, schedules, and tables.
 - b. Any policy language drafted to conform to the requirements of any federal law, regulation, or agency interpretation, any policy language required by any collectively bargained agreement, any medical terminology, any words defined in the policy, and any policy language required by law or rule, provided, however, the insurer identifies the language or terminology excepted by this subdivision and certifies, in writing, that the language or terminology is entitled to be excepted by this subdivision.
5. The commissioner may approve any other reading test for use as an alternative to the Flesch reading ease test if the other test is comparable in result to the Flesch reading ease test.
6. Filings subject to this section must be accompanied by a certificate signed by an officer of the insurance company, nonprofit health service corporation, fraternal benefit society, or health maintenance organization stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with subsection 2. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.
7. At the option of the insurance company, nonprofit health service corporation, fraternal benefit society, or health maintenance organization, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

26.1-36-15. Approval of accident and health policy forms. A policy form meeting the requirements of subsection 1 of section 26.1-36-14 must be approved notwithstanding any other law which specifies the contents of a policy, if the policy form provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

26.1-36-16. Effect of accident and health policy simplification standards on filed policies. Sections 26.1-36-13 through 26.1-36-15 do not negate any law of this state permitting the issuance of a policy form after

it has been on file for the required time period and has not been disapproved by the commissioner.

26.1-36-17. Application for accident and health policy.

1. The insured is not bound by any statement made in an application for an accident and health insurance policy unless a copy of the application is attached to or endorsed on the policy. If any policy delivered or issued for delivery to any person in this state is to be reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for reinstatement or renewal, the insurer shall within fifteen days after the receipt of the request at its home office or any branch office of the insurer, deliver or mail to the person making the request, a copy of the application. If the copy is not delivered or mailed, the insurer is precluded from introducing the application as evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal.
2. No alteration of any written application for an accident and health insurance policy may be made by any person other than the applicant without the applicant's written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that the insertions are not to be ascribed to the applicant.
3. The falsity of any statement in the application for an accident and health insurance policy may not bar the right to recovery under the policy unless the false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

26.1-36-18. Notice under accident and health policy - Waiver. The acknowledgment by any insurer of the receipt of notice given under an accident or health insurance policy, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim does not operate as a waiver of any of the rights of the insurer in defense of any claim arising under the policy.

26.1-36-19. Age limit in accident and health policy. If an accident and health insurance policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if the date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after that date, the coverage provided by the policy continues in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided

by the policy would not have become effective, or would have ceased prior to the acceptance of the premium or premiums, then the liability of the insurer is limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

26.1-36-20. Juvenile's accident and health coverage to continue - Conditions. Insurance companies and nonprofit health service corporations licensed in this state shall continue coverage of a juvenile insured under an accident and health insurance policy or a health service contract while the legal custody of the juvenile has been given by a court, under chapter 27-20, to any state institution or agency, to the same extent as the general public is covered as long as the juvenile meets all the other usual qualifications for insurability and continues to pay the policy or contract premiums. A juvenile's incarceration may not be a basis for cancellation of the juvenile's accident and health insurance policy or health service contract.

26.1-36-21. Prisoner's accident and health coverage to continue - Conditions. Insurance companies and nonprofit health service corporations licensed in this state shall continue coverage of a prisoner insured under an accident and health insurance policy or a health service contract while the prisoner is incarcerated and under state supervision to the same extent as the general public is covered as long as the prisoner meets all the other usual qualifications for insurability and continues to pay the policy or contract premiums. A prisoner's incarceration may not be a basis for cancellation of the prisoner's accident and health insurance policy or health service contract.

26.1-36-22. Group health insurance for dependents. A group health insurance policy may be extended to insure the employees or members with respect to their family members or dependents, or any class or classes thereof, subject to the following:

1. The premium for the insurance must be paid either from funds contributed by the employer, union, association, or other person to whom the policy has been issued, or from funds contributed by the covered persons, or from both. A policy on which no part of the premium for the family members or dependents coverage is to be derived from funds contributed by the covered persons must insure all eligible employees or members with respect to their family members or dependents, or any class or classes thereof.
2. An insurer may exclude or limit the coverage on any family member or dependent as to whom evidence of individual insurability is not satisfactory to the insurer.
3. A policy that provides coverage for a dependent child of an employee or other member of the covered group must provide such coverage up to a limiting age of nineteen years of age, if the dependent child physically resides

with the employee or other member and is chiefly dependent upon the employee or member for support and maintenance.

4. A policy that provides that coverage for a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy does not operate to terminate the coverage of a dependent child: (a) while the child is a full-time student and has not attained the age of twenty-three years of age; or (b) while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

26.1-36-23. Continuation of group hospital, surgical, and major medical coverage after termination of employment or membership. A group policy delivered or issued for delivery in this state issued by any insurance company, nonprofit health service corporation, health maintenance organization, or any other insurer that provides hospital, surgical, or major medical expense insurance or any accommodation of these coverages on an expense incurred basis, but not a policy that provides benefits for specific diseases or for accidental injuries only, must provide that employees or members whose insurance under the group policy would otherwise terminate because of termination of employment or membership are entitled to continue their hospital, surgical, and major medical insurance under that group policy, for themselves and their eligible dependents, subject to all of the group policy's terms and conditions applicable to those forms of insurance and to the following conditions:

1. Continuation is only available to an employee or member who has been continuously insured under the group policy (and for similar benefits under any group policy which it replaced) during the entire three-month period ending with the termination.
2. Continuation is not available for any person who is covered by medicare. Neither is continuation available for any person who is covered by any other insured or uninsured arrangement which provides hospital, surgical, or medical coverages for individuals in a group and under which the person was not covered immediately prior to the termination.
3. Continuation need not include dental, vision care, or prescription drug benefits or any other benefits provided

under the group policy in addition to its hospital, surgical, or major medical benefits.

4. An employee or member who wishes continuation of coverage must request the continuation in writing within the ten-day period following the later of the date of termination, or the day the employee is given notice of the right of continuation by either the employer or the group policyholder. The employee or member may not elect continuation more than thirty-one days after the date of termination.
5. An employee or member electing continuation shall pay to the group policyholder or the employer, on a monthly basis in advance, the amount of contribution required by the policyholder or employer, but not more than the group rate for the insurance being continued under the group policy on the due date of each payment. The employee's or member's written election of continuation, together with the first contribution required to establish contributions on a monthly basis in advance, must be given to the policyholder or employer within thirty-one days of the date the employee's or member's insurance would otherwise terminate.
6. Continuation of insurance under the group policy for any person terminates when the person fails to satisfy subsection 2 or, if earlier, at the first to occur of the following:
 - a. The date thirty-nine weeks after the date the employee's or member's insurance under the policy would otherwise have terminated because of termination of employment or membership.
 - b. If the employee or member fails to make timely payment of a required contribution, the end of the period for which contributions were made.
 - c. The date on which the group policy is terminated or, in the case of an employee, the date the employer terminates participation under the group policy. However, if this subdivision applies and the coverage ceasing by reason of such termination is replaced by similar coverage under another group policy, the following apply:
 - (1) The employee or member may become covered under that other group policy for the balance of the period that the employee or member would have remained covered under the prior group policy in accordance with this subsection had a termination described in this subdivision not occurred.

- (2) The minimum level of benefits to be provided by the other group policy is the applicable level of benefits of the prior group policy reduced by any benefits payable under that prior group policy.
 - (3) The prior group policy must continue to provide benefits to the extent of its accrued liabilities and extensions of benefits as if the replacement had not occurred.
7. A notification of the continuation privilege must be included in each certificate of coverage.
 8. Upon termination of the continuation period, the member, surviving spouse, or dependent is entitled to exercise any option which is provided in the group plan to elect a conversion policy. The member electing a conversion policy shall notify the carrier of the election and pay the required premium within thirty-one days of the termination of the continued coverage under the group contract.

26.1-36-24. Health policy transferable. A health insurance policy may pass by transfer, will, or succession to any person, whether that person has an insurable interest or not, and that person may recover any benefit payable under the policy in accordance with the terms of the policy, but in no event shall such transfer or succession operate to change the named insured or insureds covered under the policy. An insured under a group health insurance policy, pursuant to agreement among the insured, the group policyholder and the insurer, may make an assignment of all or any part of the incidents of ownership held by the insured under the policy, including any right to designate a beneficiary and any right to have an individual policy issued in case of termination of employment. An assignment, whether made prior to or subsequent to July 1, 1971, is valid for the purpose of vesting in the assignee all the incidents of ownership assigned, and entitles the insurer to deal with the assignee as the owner in accordance with the policy, but without prejudice to the insurer on account of any payment made or individual policy issued prior to receipt by the insurer of such notice as may be required by the policy.

26.1-36-25. Notice of transfer of health policy unnecessary - Exception. Notice to an insurer of a transfer or bequest of a health insurance policy is not necessary to preserve the validity of the policy unless notice is required by the policy.

26.1-36-26. Dual choice option on group health coverage - Minimum conditions - Transfer of coverage. If an existing or prospective employer group desires a dual choice option between a nonprofit health service corporation or an insurance company and a health maintenance organization, the dual choice option may be made available to the employees in the group only if all of the following conditions are met:

1. There are at least fifteen employees in the group.
2. The group must maintain the highest enrollment percentage as specified in the underwriting manual of the nonprofit health service corporation, the insurance company, or the health maintenance organization, and the health maintenance organization enrollees must be combined with subscribers of nonprofit health service corporations or insureds of insurance companies in meeting the percentage requirements.
3. An employee must be allowed to transfer between coverage offered by a health maintenance organization and coverage offered by a nonprofit health service organization or insurance company on the group's anniversary date as specified in the master contract with the group, except a special opening must be offered at the group's request for the following reasons:
 - a. Upon a group's initial offering of a dual choice plan in addition to existing coverages offered by a nonprofit health service corporation or an insurance company.
 - b. When a group discontinues offering a dual choice plan with a health maintenance organization to request open enrollment into the group offered by the nonprofit health service corporation or the insurance company.
 - c. If the group offers both coverage by a nonprofit health service corporation or an insurance company and a health maintenance organization and an individual employee enrolled in the health maintenance organization transfers within the same company but leaves the service area of the health maintenance organization, the employee must be allowed to enroll in the plan offered by the nonprofit health service corporation or the insurance company at the time of transfer.
 - d. Any group that offers health coverage to its retired employees by a nonprofit health service corporation or an insurance company and a health maintenance organization must advise the employees who are enrolled under their present coverage that they may change to other coverage offered at the time of retirement and if the employees who retire elect to retain or change their present coverage, the employees will no longer be eligible to change coverage after retirement.

26.1-36-27. Dual choice option on group health coverage - Continuous coverage - Payment of benefits. If an employee, or an eligible dependent of the employee, transfers from coverage provided by a

nonprofit health service corporation or an insurance company to coverage offered by a health maintenance organization or transfers from coverage offered by a health maintenance organization to coverage offered by a nonprofit health service corporation or an insurance company and is an inpatient of a hospital or alcoholism treatment center on the day the coverage becomes effective, then the benefits for confinement on an inpatient basis of a hospital or alcoholism treatment center must be provided by the nonprofit health service corporation, insurance company, or health maintenance organization providing coverage on the date the employee or the eligible dependent of the employee was confined as an inpatient of a hospital or alcoholism treatment center so long as coverage is uninterrupted, medically necessary, and directly related to the inpatient's stay.

26.1-36-28. Measure of indemnity in health policy. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a health insurance policy is the sum fixed in the policy.

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 26.1-36-10.

26.1-36-30. Individual or group accident and health insurer or nonprofit health service corporation responsibility - Release of information to department of human services.

1. Any individual or group accident and health insurer or nonprofit health service corporation, upon request of the department of human services, shall provide any information contained in its records pertaining to an individual who is an applicant for or recipient of medical assistance under chapter 50-24.1, and who is covered under an accident and health insurance policy or a health service contract issued by the insurer or nonprofit health service corporation or the medical benefits paid by or claims paid to the insured or subscriber under a policy or contract. The insurer or nonprofit health service corporation shall make the requested records or information available upon receipt of a certification by the department of human services that the individual is an

applicant for or recipient of medical assistance under chapter 50-24.1, or is a person who is legally responsible for the applicant or recipient.

2. The information required to be made available pursuant to this section is limited to information necessary to determine whether benefits under the policy or contract have been or should have been claimed and paid pursuant to an accident and health insurance policy or health service contract with respect to items of medical care and services received by a particular individual for which medical assistance coverage would otherwise be available.
3. The department of human services shall, in consultation with the commissioner, establish guidelines:
 - a. For the method of requesting and furnishing appropriate information, the time in which the information is to be provided, and method of reimbursing insurance companies and nonprofit health service corporations for necessary costs incurred in furnishing the requested information.
 - b. To assure that information relating to an individual certified to be an applicant for or recipient of medical assistance under chapter 50-24.1, furnished to an insurer or subscriber pursuant to this section, is used only for the purpose of identifying the records or information requested in such manner so as not to violate section 50-06-15.

26.1-36-31. Medicare supplement policies - Definitions. In sections 26.1-36-31 through 26.1-36-36, unless the context otherwise requires:

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, 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. 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.
- c. Individual policies or contracts issued pursuant to a conversion privilege under an individual or group insurance policy or contract when the individual or group policy or contract includes provisions which are inconsistent with the requirements of sections 26.1-36-32 through 26.1-36-36.

26.1-36-32. 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 cover:
 - 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. Definitions 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.

26.1-36-33. Medicare supplement policy benefit standards. The commissioner shall adopt rules to establish minimum standards for benefits under medicare supplement policies.

26.1-36-34. Medicare supplement policy loss ratio standards. Medicare supplement policies must return benefits to individual policyholders in the aggregate of not less than sixty 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. For purposes of rules adopted pursuant to this section, medicare supplement policies issued as a result of individual solicitations through the mail or mass media advertising, including both print and broadcast advertising, are treated as individual policies.

26.1-36-35. 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 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.

e. Policies excepted from the definition of medicare supplement policies in section 26.1-36-31.

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.

26.1-36-36. Medicare supplement policies - Notice of free examination. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, 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 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. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare must have a notice prominently printed on or attached to the first page 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, the applicant is not satisfied for any reason.

26.1-36-37. Nursing home policy - Guaranteed renewable for life - Limitation on preexisting conditions. Any policy providing benefits for confinement to a nursing home must be guaranteed renewable for life. For the purposes of this section, "guaranteed renewable" means a policy which the insured has the right to continue in force for life subject to its 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 providing nursing home coverage may not contain any provision limiting payment of benefits due to preexisting conditions of the insured after the policy has been in force for a period of six months.

26.1-36-38. Rulemaking authority. The commissioner may adopt reasonable rules necessary, proper, or advisable to administer this chapter.

26.1-36-39. 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.

26.1-36-40. 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 14. Chapter 26.1-37 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-37-01. Scope and construction. All life insurance and all accident and health insurance in connection with loans or other credit transactions are subject to this chapter, except such insurance in connection with a loan or other credit transaction of more than twenty years' duration, and except where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor. This chapter must be liberally construed.

26.1-37-02. Definitions. For the purpose of this chapter:

1. "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.
2. "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.
3. "Creditor" means the lender of money or vendor or lessor of goods, services, or property, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of the lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them, or any other person in any way associated with any of them.
4. "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.
5. "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

26.1-37-03. Issuance of policies. All credit life insurance and credit accident and health insurance policies may be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein, and may be issued only through holders of licenses or authorizations issued by the commissioner.

26.1-37-04. Forms of credit life insurance and credit accident and health insurance. Credit life insurance and credit accident and health insurance may be issued only in the following forms:

1. Individual life insurance policies issued to debtors on the term plan.
2. Individual accident and health insurance policies issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance.
3. Group life insurance policies issued to creditors providing insurance upon the lives of debtors on the term plan.
4. Group accident and health insurance policies issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies.

26.1-37-05. Amount of credit life insurance and credit accident and health insurance.

1. Except as otherwise provided in this subsection, the initial amount of credit life insurance may not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance may not exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Insurance on agricultural credit transaction commitments, not exceeding one year in duration, may be written up to the amount of the loan commitment, on a nondecreasing or level term plan. Insurance on educational credit transaction commitments may be written for the amount of the portion of such commitment that has not been advanced by the creditor.
2. The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, may not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of each periodic indemnity payment may not exceed the original indebtedness divided by the number of periodic installments.

26.1-37-06. Term of credit life insurance and credit accident and health insurance. The term of any credit life insurance or credit accident and health insurance, subject to acceptance by the insurer, commences on the date when the debtor becomes obligated to the creditor, except that where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to the indebtedness commences on the effective date of the policy. Where evidence of insurability is required and the evidence is furnished more than thirty days after the date when the debtor

becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurer determines the evidence to be satisfactory, and in that event there must be an appropriate refund or adjustment of any charge to the debtor for insurance. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force must be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund must be paid or credited as provided in section 26.1-37-08.

26.1-37-07. Provisions of policies and certificates of insurance - Disclosure to debtors.

1. All credit life insurance and credit accident and health insurance must be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance.
2. Each individual policy or group certificate of credit life insurance or credit accident and health insurance must, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor or in the case of a certificate under a group policy, the identity by name or otherwise of the debtor, the premium or amount of payment, if any, by the debtor separately for credit life insurance and credit accident and health insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations, and restrictions, and must state that the benefits will be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance exceeds the unpaid indebtedness, that any excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.
3. The individual policy or group certificate of insurance must be delivered to the insured at the time the indebtedness is incurred except as provided in subsection 4.
4. If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit accident and health insurance, the amount, term, and a brief description of the coverage provided, must be delivered to the debtor at the time the indebtedness is incurred. The copy of the application or notice of proposed insurance must also refer exclusively to insurance coverage, and must be separate and apart from the loan, sale, or other

credit statement of account, instrument, or agreement, unless the information required by this subsection is prominently set forth in that material. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance must state that upon acceptance by the insurer, the insurance becomes effective as provided in section 26.1-37-06. If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund must be made.

26.1-37-08. Premiums and refunds.

1. No insurer may issue any credit life insurance policy or credit accident and health insurance policy for which the premium rate exceeds that determined by the schedules of the insurer as on file with the commissioner.
2. Each individual policy or group certificate must provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance must be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than the minimum need be made.
3. If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.
4. The amount charged to a debtor for any credit life or credit health and accident insurance may not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.
5. This chapter does not authorize any payments for insurance prohibited under any law or rule governing credit transactions.

26.1-37-09. Applicability of credit life and health policy simplification standards.

1. Except as provided in subsection 3, sections 26.1-37-09 through 26.1-37-12 apply to all individual and group credit life insurance and credit accident and health insurance policies and insurance certificates under group credit life and accident and health insurance policies filed after June 30, 1982. No policy may be delivered or issued for delivery in this state after June 30, 1986, unless the policy form has been approved by the commissioner or is permitted to be issued under sections 26.1-37-09 through 26.1-37-12. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by sections 26.1-37-09 through 26.1-37-12 need not be refiled for approval, but may continue to be delivered or issued for delivery in this state upon the filing with the commissioner of a list of the forms identified by form number and accompanied by a certificate as to each such form in the manner provided in subsection 6 of section 26.1-37-10.
2. The commissioner may extend the dates in subsection 1.
3. Sections 26.1-37-09 through 26.1-37-12 do not apply to:
 - a. Any policy that is a security subject to federal jurisdiction.
 - b. Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates the form must be approved under sections 26.1-37-09 through 26.1-37-12.
 - c. The renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under sections 26.1-37-09 through 26.1-37-12.
4. No other state law setting language simplification standards applies to policy form.

26.1-37-10. Minimum credit life and health policy language simplification standards.

1. No policy form may be delivered or issued for delivery in this state, unless:
 - a. The text achieves a minimum score of forty on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection 3.
 - b. It is printed, except for specification pages, schedules, and tables, in not less than ten-point type, one point leaded.

- c. The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsement or rider.
 - d. It contains a table of contents or an index of the principal sections of the policy, if the policy has more than three thousand words printed or three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.
2. The commissioner may authorize a lower score than the Flesch reading ease score required in subdivision a of subsection 1 whenever the commissioner finds that a lower score:
 - a. Will provide a more accurate reflection of the readability of a policy form.
 - b. Is warranted by the nature of a particular policy form or type or class of policy forms.
 - c. Is caused by certain policy language which is drafted to conform to the requirements of any state law or rule, or agency interpretation.
 3. A Flesch reading ease test score is measured by the following method:
 - a. For policy forms containing ten thousand words or less of text, the entire form must be analyzed. For policy forms containing more than ten thousand words, the readability of two 2-hundred word samples per page may be analyzed instead of the entire form. The samples must be separated by at least twenty printed lines.
 - b. The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of one and fifteen thousandths.
 - c. The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of eighty-four and six-tenths.
 - d. The sum of the figures computed under subdivisions b and c subtracted from two hundred six and eight hundred thirty-five thousandths equals the Flesch reading ease score for the policy form.
 - e. For purposes of subdivisions b, c, and d, the following procedures must be used:

- (1) A contraction, hyphenated word, or numbers and letters, when separated by spaces, are counted as one word.
 - (2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, is counted as a sentence.
 - (3) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.
4. As used in this section, "text" includes all printed matter except:
 - a. The name and address of the insurer, the name, number, or title of the policy, the table of contents or index, captions and subcaptions, specification pages, schedules, and tables.
 - b. Any policy language drafted to conform to the requirements of any federal law, regulation, or agency interpretation, any policy language required by any collectively bargained agreement, any medical terminology, any words defined in the policy, and any policy language required by law or rule, provided, however, the insurer identifies the language or terminology excepted by this paragraph and certifies, in writing, that the language or terminology is entitled to be excepted by this paragraph.
 5. The commissioner may approve any other reading test for use as an alternative to the Flesch reading ease test if the other test is comparable in result to the Flesch reading ease test.
 6. Filings subject to this section must be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with subsection 2. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.
 7. At the option of the insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

26.1-37-11. Approval of credit life and health forms. A policy form meeting the requirements of subsection 1 of section 26.1-37-10 must be approved notwithstanding any other law which specifies the contents of a policy, if the policy form provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

26.1-37-12. Effect of credit life and health policy simplification standards on filed policies. Sections 26.1-37-09 through 26.1-37-11 do not negate any law of this state permitting the issuance of a policy form after it has been on file for the required time period and has not been disapproved by the commissioner.

26.1-37-13. Claims.

1. All claims must be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims must be settled as soon as possible and in accordance with the terms of the insurance contract.
2. All claims must be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of the claimant to one specified.
3. No plan or arrangement may be used whereby any person other than the insurer or its designated claim representative is authorized to settle or adjust claims. The creditor may not be designated as claim representative for the insurer in adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

26.1-37-14. Existing insurance - Choice of insurer. When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the debtor, upon request to the creditor, has the option of furnishing the required amount of insurance through existing insurance policies owned or controlled by the debtor or of procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state.

26.1-37-15. Enforcement. The commissioner may adopt rules to implement this chapter. Whenever the commissioner finds that there has been a violation of this chapter or any rules adopted pursuant to this chapter, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, the commissioner shall set forth the details of the findings together with an order for compliance by a specified date. The order is binding on the insurer and other person authorized or

licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay has been ordered by a court of competent jurisdiction.

26.1-37-16. Penalties. In addition to any other penalty provided by law, any person violating an order of the commissioner after it has become final, and while the order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to this state a sum not to exceed two hundred and fifty dollars which may be recovered in a civil action, except that if the violation is found to be willful, the amount of the penalty may be a sum not to exceed one thousand dollars. The commissioner may after notice and hearing revoke or suspend the license or certificate of authority of the person guilty of the violation.

SECTION 15. Chapter 26.1-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-38-01. Scope. This chapter applies to direct life insurance policies, accident and health insurance policies, health service contracts, annuity contracts, and contracts supplemental to life and accident and health insurance policies and annuity contracts issued by persons licensed to transact business in this state at any time. This chapter does not apply to:

1. That portion or part of a variable life insurance or variable annuity contract not guaranteed by an insurer.
2. That portion or part of any policy or contract under which the risk is borne by the policyholder.
3. Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.
4. Any policy or contract issued by a health maintenance organization, a fraternal benefit society, a benevolent society, or the comprehensive health association.
5. Any policy or contract within the application of section 26.1-42-01.

26.1-38-02. Definitions. As used in this chapter:

1. "Account" means either of the three accounts created under section 26.1-38-03.
2. "Association" means the North Dakota life and health insurance guaranty association.
3. "Board" means the board of directors of the association.

4. "Contractual obligation" means any obligation under covered policies.
5. "Covered policy" means any policy or contract within the scope of this chapter under section 26.1-38-01.
6. "Impaired insurer" means a member insurer deemed by the commissioner after July 1, 1983, to be potentially unable to fulfill its contractual obligations and not an insolvent insurer.
7. "Insolvent insurer" means a member insurer that after July 1, 1983, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction.
8. "Member insurer" means any person licensed to transact in this state any kind of insurance to which this chapter applies under section 26.1-38-01.
9. "Premiums" means direct gross insurance premiums, subscriber fees, and annuity considerations received on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" does not include premiums and considerations on contracts between insurers and reinsurers.
10. "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed.

26.1-38-03. Creation of the North Dakota life and health insurance guaranty association - Accounts - Supervision by commissioner. There is created a nonprofit legal entity to be known as the North Dakota life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under its plan of operation and shall exercise its powers through a board of directors. For purposes of administration and assessment, the association shall maintain a health insurance account, a life insurance account, and an annuity account. The association is under the supervision of the commissioner and is subject to the applicable provisions of this title.

26.1-38-04. Board of directors. The board of directors of the association must consist of no fewer than five nor more than nine member insurers serving terms as established in the plan of operation. The member insurers shall select the members of the board, subject to the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the

approval of the commissioner. To select the initial board, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer is entitled to one vote in person or by proxy. In approving selections to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board but members of the board may not otherwise be compensated by the association for their services.

26.1-38-05. Powers, duties, and authority of the association. In addition to the powers and duties enumerated in other sections of this chapter:

1. If a domestic insurer is an impaired insurer, the association may, subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:
 - a. Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurers.
 - b. Provide any moneys, pledges, notes, guarantees, or other means as are proper to effectuate subdivision a, and assure payment of the contractual obligations of the impaired insurer pending action under subdivision a.
 - c. Loan money to the impaired insurer.
2. If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:
 - a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer.
 - b. Assure payment of the contractual obligations of the insolvent insurer.
 - c. Provide any moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge duties under subdivisions a and b.
3. If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:

- a. Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents.
- b. Assure payment of the contractual obligations of the insolvent insurer to residents.
- c. Provide any moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge duties under subdivisions a and b.

This subsection does not apply where the commissioner has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this chapter for residents of this state.

4. In carrying out its duties under subsections 2 and 3, permanent policy liens or contract liens may be imposed in connection with any guarantee, assumption, or reinsurance agreement, if the court:
 - a. Finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, to be in the public interest; and
 - b. Approves the specific policy liens or contract liens to be used.

Before being obligated under subsections 2 and 3, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values. Such temporary moratoriums and liens may be imposed if they are approved by the court.

5. If the association fails to act within a reasonable period of time as provided in subsections 2 and 3, the commissioner shall have the powers and duties of the association under this chapter with respect to insolvent insurers.
6. The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

7. The association may appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. This standing extends to all matters germane to the powers and duties of the association, including proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.
8. Any person receiving benefits under this chapter is deemed to have assigned the rights under the covered policy to the association to the extent of the benefits received because of this whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon that person. The association is subrogated to these rights against the assets of any insolvent insurer. The subrogation rights of the association under this subsection have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.
9. The contractual obligations of the insolvent insurer for which the association becomes or may become liable are as great as but no greater than the contractual obligations of the insolvent insurer would have been in the absence of an insolvency unless the obligations are reduced as permitted by subsection 4 but the aggregate liability of the association may not exceed one hundred thousand dollars in cash values, or three hundred thousand dollars for all benefits, including cash values, with respect to any one life.
10. The association may:
 - a. Enter into contracts necessary or proper to carry out this chapter.
 - b. Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 26.1-38-06.
 - c. Borrow money to effect the purposes of this chapter.
 - d. Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform any other functions as become necessary or proper under this chapter..

- e. Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.
- f. Take any necessary legal action to avoid payment of improper claims.
- g. Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or accident and health insurer, but the association may not issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

26.1-38-06. Assessments.

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board shall assess the member insurers, separately for each account, at the time and for the amounts the board finds necessary. Assessments are due not less than thirty days after prior written notice to the member insurers and accrue interest at eighteen percent per annum on and after the due date.
2. There are three classes of assessments:
 - a. Class A assessments are made for the purpose of meeting administrative costs and other general expenses and examinations conducted under the authority of subsection 5 of section 26.1-38-11 not related to a particular impaired or insolvent insurer.
 - b. Class B assessments are made to the extent necessary to carry out the powers and duties of the association under section 26.1-38-05 with regard to an impaired or insolvent domestic insurer.
 - c. Class C assessments are made to the extent necessary to carry out the powers and duties of the association under section 26.1-38-05 with regard to an insolvent foreign or alien insurer.
3. a. The board shall determine the amount of any class A assessment. The assessment may be made on a non-pro rata basis. The assessment must be credited against future insolvency assessments and may not exceed fifty dollars per company in any calendar year. The amount of any class B or class C assessment must be allocated for assessment purposes among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account for the last calendar year preceding the

- assessment in which the impaired or insolvent insurer received premiums bears to the premiums received by such insurer for such calendar year on all covered policies.
- b. Class C assessments against member insurers for each account must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessments bears to such premiums received on business in this state for the calendar year preceding the assessment by all assessed member insurers.
 - c. Class B assessments for each account must be made separately for each state in which the impaired or insolvent domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in that state by the impaired or insolvent insurer on policies covered by the account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bears to the premiums received in all such states for that calendar year by the impaired or insolvent insurer. The assessments against member insurers must be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bears to such premiums received on business in each state for the calendar year preceding assessment by all assessed member insurers.
 - d. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be made until necessary to implement this chapter. Classification of assessments under subsection 2 and computation of assessments under this subsection must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.
4. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.
 5. The total of all assessments upon a member insurer for each account may not in any one calendar year exceed two

percent of the insurer's premiums received in this state during the calendar year preceding the assessment on the policies covered by the account. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon thereafter as permitted by this chapter.

6. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.
7. The association shall issue to each insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment paid. All outstanding certificates are of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

26.1-38-07. Tax exemption. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

26.1-38-08. Credits for assessments paid.

1. A member insurer may offset against its premium tax liability to this state an assessment described in subsection 7 of section 26.1-38-06 to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If a member insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.
2. The association shall pay any sums acquired by refund, pursuant to subsection 6 of section 26.1-38-06, from the association which have theretofore been written off by contributing insurers and offset against premium taxes as

provided in subsection 1, and are not then needed for purposes of this chapter, to the commissioner. The commissioner shall deposit these sums with the state treasurer for credit to the general fund of this state.

26.1-38-09. Plan of operation.

1. The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments become effective upon approval in writing by the commissioner. If the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt any reasonable rules necessary or advisable to effectuate this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.
2. All member insurers shall comply with the plan of operation.
3. The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:
 - a. Establish procedures for handling the assets of the association.
 - b. Establish the amount and method of reimbursing members of the board under section 26.1-38-04.
 - c. Establish regular places and times for meetings of the board.
 - d. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board.
 - e. Establish the procedures whereby selections for the board will be made and submitted to the commissioner.
 - f. Establish any additional procedures for assessments under section 26.1-38-06.
 - g. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
4. The plan of operation may provide that any or all powers and duties of the association, except those under subdivision c of subsection 10 of section 26.1-38-05 and section 26.1-38-06, are delegated to a corporation, association, or other organization which performs or will

perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization must be reimbursed for any payments made on behalf of the association and must be paid for its performance of any function of the association. A delegation under this subsection takes effect only with the approval of both the board and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

26.1-38-10. Powers and duties of the commissioner. In addition to the duties and powers enumerated elsewhere in this chapter:

1. The commissioner shall:
 - a. Upon request of the board, provide the association with a statement of the premiums in the appropriate states for each member insurer.
 - b. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with this demand does not excuse the association from the performance of its powers and duties under this chapter.
 - c. In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.
2. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. The forfeiture may not exceed five percent of the unpaid assessment per month, but no forfeiture may be less than one hundred dollars per month.
3. Any action of the board may be appealed to the commissioner by any member insurer within thirty days of the action being appealed.

4. The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this chapter.

26.1-38-11. Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies or impairments:

1. The commissioner shall:
 - a. Notify the insurance departments of all the other states when the commissioner takes any of the following actions against a member insurer:
 - (1) Revocation of license.
 - (2) Suspension of license.
 - (3) Issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

The notice must be mailed within thirty days following the action taken or the date on which such action occurs.

 - b. Report to the board when the commissioner has taken any of the actions set forth in subdivision a or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the board must contain all significant details of the action taken or the report received from another commissioner.
 - c. Report to the board when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer.
 - d. Furnish to the board the early warning tests developed by the national association of insurance commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The board shall keep the report and the information contained in the report confidential until made public by the commissioner or other lawful authority.
2. The commissioner may seek the advice and recommendations of the board concerning any matter affecting the

commissioner's duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.

3. The board may, upon majority vote, make reports and recommendations to the commissioner upon any manner germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. The reports and recommendations are not public documents.
4. The board shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.
5. The board may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by any person the commissioner designates. The association shall pay the cost of the examination, and the examination report must be treated as are other examination reports. The examination report may not be released to the board prior to its release to the public, but this does not preclude the commissioner from complying with subsection 1. The commissioner shall notify the board when the examination is completed. The commissioner shall keep the request for an examination on file but the request is not open to public inspection prior to the release of the examination report to the public.
6. The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.
7. The board shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing the information it may have in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of a particular insurer, and may adopt by reference any report prepared by the other associations.

26.1-38-12. Assessment liability - Recordkeeping - Obligations - Distributions.

1. This chapter does not reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability.
2. Records shall 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 26.1-38-05. Records of the 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 of insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under section 26.1-38-15.
3. For the purpose of carrying out its obligations under this chapter, the association is deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subsection 8 of section 26.1-38-05. Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.
4.
 - a. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In the determination consideration must be given to the welfare of the policyholders of the continuing or successor insurer.
 - b. No distribution to stockholders, if any, of an impaired or insolvent insurer may be made until and unless the total amount of valid claims of the association for funds expended in carrying out its powers and duties under section 26.1-38-05 with respect to the insurer have been fully recovered by the association.

5. a. If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has the right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions b through d. As used in this subsection, "affiliate" and "control" have the meanings contained in section 26.1-10-01.
- b. No such dividend is recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- c. Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions that person received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, is liable up to the amount of distributions that person would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they are jointly and severally liable.
- d. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.
- e. If any person liable under subdivision c is insolvent, all its affiliates that controlled it at the time the dividend was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

26.1-38-13. Stay of proceedings - Reopening default judgments. All proceedings in which the insolvent insurer is a party in any court in this state must be stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have the judgment set aside by the same court that made the judgment and must be permitted to defend against such suit on the merits.

26.1-38-14. Prohibited advertisement of chapter in insurance sales. No person, including an insurer, agent, or affiliate of an insurer may

make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. This section does not apply to the association or any other entity which does not sell or solicit insurance.

26.1-38-15. Examination of the association - Annual statement. The association is subject to examination and regulation by the commissioner. The board shall submit to the commissioner, not later than March first of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

26.1-38-16. Immunity. There is no liability on the part of and no claim for relief of any nature may arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board, or the commissioner or the commissioner's representatives, for any action taken by them in the performance of their powers and duties under this chapter.

SECTION 16. Chapter 26.1-39 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-39-01. Rescission of fire insurance contract for alteration increasing risk. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, if made without the consent of the insurer, by means within the control of the insured, and if it increases the risk, entitles an insurer to rescind a fire insurance contract.

26.1-39-02. Rescission of fire contract not permitted if risk not increased. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a fire insurance contract.

26.1-39-03. When fire contract unaffected though risk increased. A fire insurance contract is not affected by any act of the insured subsequent to the execution of the policy, if the act does not violate its provisions, even though it increases the risk and is the cause of a loss.

26.1-39-04. Measure of indemnity on fire policy. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy. If there is a valuation in the policy, the valuation is conclusive between the parties in the adjustment either of a partial or a total loss if the insured has some interest at risk and there is no fraud on the insured's part. In the event of a partial loss, the insurer is

liable only for the proportion of the amount insured. as the loss bears to the value of the whole interest of the insured in the property insured. A valuation fraudulent in fact, however, entitles the insurer to rescind the contract.

26.1-39-05. Face of fire policy to be paid in case of loss by fire. Whenever any insurance policy is written to insure any real property in this state against loss by fire and the insured property is destroyed by fire without fraud on the part of the insured or the insured's assigns, the stated amount of the insurance written in the policy is the true value of the property insured.

26.1-39-06. Standard fire insurance policy. No fire insurance contract or policy, including a renewal, may be made, issued, used or delivered by any insurer or by any agent or representative of the insurer, on property in this state other than such as conform in all particulars as to blanks, size of type, context, provisions, agreements, and conditions with the 1943 standard fire insurance policy of the state of New York, a copy of which must be filed in the office of the commissioner as the standard policy for this state. The cancellation provisions contained in the standard policy are superseded to the extent sections 26.1-39-10 through 26.1-39-21 are inconsistent with the provisions. No other or different provision, agreement, condition, or clause may be made a part of the contract or policy or be endorsed on the contract or policy or delivered with the contract or policy, except as follows:

1. The name of the insurer, its location and place of business, the date of its incorporation or organization, and the state or county under which the insurer is organized, the amount of paid-up capital stock, whether it is a stock or mutual company, the names of its officers, the number and the date of the policy, and appropriate company emblems may be printed on policies issued on property in this state; provided, however, that any insurer organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this state.
2. Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions may not be inconsistent with or a waiver of any of the provisions or conditions of the standard policy, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of contracts, supplemental contracts, or endorsements, whereby the interest in the property described is insured against one or more of the perils which the insurer is empowered to assume, may be used in connection with the standard policy. The forms of contracts, supplemental contracts, or endorsements attached or printed on the policy may contain provisions

and stipulations inconsistent with the standard policy if applicable only to the other perils. The first page of the standard policy may be rearranged to provide space for the listing of rates and premiums for coverages insured under the policy or under endorsements attached or printed on the policy, and such other data as may be included for duplication on daily reports for office records.

3. An insurer, if entitled to do business in this state, may with the approval of the commissioner, if not already included in the standard form as filed with the commissioner, print on its policies, any provision which it is required by law to insert in the policies, if the provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard policy, but the provision must be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: "Provisions required by law to be stated in this policy", and must be a part of the policy.
4. There may be endorsed in writing on the outside of any policy the name, with the word "Agent or Agents" and place of business, of any insurance agent or agents. There may also be added, with the approval of the commissioner, a statement of the group of companies with which the insurer is financially affiliated.
5. When two or more insurers, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in head line of each policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each insurer and the proportion of liability which each insurer agrees to assume. And in the printed conditions of the policy the necessary change may be made from the singular to plural number, when reference is had to the insurers issuing such policy.
6. With the approval of the commissioner, a combined farm policy may be used, the fire portion of which must be substantially in accord with the standard policy.
7. The standard policy is an interest policy and must be so construed as to at all times protect the interest, whatever it may be, of any named insured. Provided, however, that a five-day grace period is allowed after the execution of any written instrument transferring interest in insured property during which full protection must be granted under the terms of the policy.
8. In case of other coverage on the same peril, the liability of each insurer may not be for any greater amount or

proportion of the loss than the ratio such insurance bears to the valid and collectible whole insurance covering the property against the peril involved.

9. No contract or policy issued under this section may contain a limitation of less than three years for the bringing of any suit or action under the contract or policy.
10. This section does not apply to inland marine, ocean marine, or automobile insurance.

26.1-39-07. Standard fire policy - Loss or damage caused by nuclear reaction. An insurer issuing the standard policy pursuant to section 26.1-39-06 may affix to the policy or include in the policy a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under the policy. An insurer may attach to the standard policy an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination.

26.1-39-08. Construction of standard fire policy. The standard policy is a valued policy as defined under section 26.1-30-03. An insurance policy in the form prescribed by section 26.1-39-06 is subject to the rules of construction as to its effect or the waiver of any of its provisions which would apply if the form had not been prescribed.

26.1-39-09. Nonstandard fire policy. The commissioner may approve for use in this state a form of policy which does not correspond to the standard policy as provided by section 26.1-39-06; provided, that the coverage of the approved policy form with respect to the peril of fire may not be less than that contained in the standard policy.

26.1-39-10. Property and casualty policies - Declination, cancellation, and nonrenewal - Scope. Sections 26.1-39-10 through 26.1-39-21 apply to insurance policies or risks located or resident in this state which are issued and take effect or which are renewed after July 1, 1983, and insure against any of the following:

1. Loss of or damage to real property which consists of not more than four residential units, one of which is the principal place of residence of the named insured.
2. Loss of or damage to personal property owned by the named insured or used for personal, family, or household purposes within a residential dwelling.
3. Legal liability of the named insured arising out of bodily injury to or death of any persons or damage to property, except bodily injury, death, or property damage arising

out of business pursuits or the rendering or failure to render professional services.

Sections 26.1-39-10 through 26.1-39-21 do not apply to workmen's compensation policies, automobile policies, inland marine policies, insurance policies issued through a residual market mechanism, or policies primarily insuring risks arising from the conduct of a commercial or industrial enterprise.

For purposes of sections 26.1-39-10 through 26.1-39-21, any policy period or term of less than six months is considered a policy period or term of six months and any policy period or term of more than one year or any policy with no fixed expiration date is considered a policy period or term of one year.

26.1-39-11. Definitions.

1. "Declination" means the refusal of an insurer to issue a property insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant. For the purposes of sections 26.1-39-10 through 26.1-39-21, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage is considered a declination.
2. "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on property insurance policies subject to sections 26.1-39-10 through 26.1-39-21, whether the payments are directly payable to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of premium" includes the failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing property insurance coverage.
3. "Renewal" or "to renew" means the issuance and delivery by an insurer at the end of a policy period of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of an existing policy beyond its policy period or term.
4. "Termination" means either a cancellation or nonrenewal of property insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term as set forth in subsection 3. For purposes of sections 26.1-39-10 through 26.1-39-21, the transfer of a policyholder between companies within the same insurance group is considered a

termination. Requiring a reasonable deductible, reasonable changes in the amount of insurance, or reasonable reductions in policy limits or coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date for the policy.

26.1-39-12. Notification and reasons for declination of property and casualty policies.

1. Upon declining to insure any property subject to sections 26.1-39-10 through 26.1-39-21, the insurer making the declination shall either provide the insurance applicant with a written explanation of the specific reasons for the declination at the time of the declination or advise the applicant that a written explanation of the specific reasons for the declination will be provided within twenty-one days of the time of the receipt of the applicant's written request for such an explanation. An applicant's written request is timely under this section if received within ninety days of the date of that notice to the applicant.
2. No insurer not represented by an agent or broker, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requires insurance coverage from the insurer.
3. No agent or broker, for any reason set out in section 26.1-39-17, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the agent, broker, or insurer.

26.1-39-13. Notification and reasons for cancellation of property and casualty policies.

1. After coverage has been in effect for more than sixty days or after the effective date of a renewal policy, a notice of cancellation may not be issued unless it is based upon at least one of the following reasons:
 - a. Nonpayment of premium.
 - b. Discovery of fraud or material misrepresentation and the procurement of the insurance or with respect to any claims submitted thereunder.
 - c. Discovery of willful or reckless acts or omissions on the part of the named insured which increase any hazard insured against.

- d. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed.
 - e. 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.
 - f. A determination by the commissioner that the continuation of the policy would place the insurer in violation of the insurance laws of this state.
 - g. Conviction of the named insured of a crime having as one of its necessary elements an act increasing any hazard insured against.
2. A written notice of cancellation must be mailed or delivered to the named insured, at the last known address of the named insured, at least thirty days prior to the effective date of cancellation or when the cancellation is for nonpayment of premium at least ten days prior to the effective date of cancellation. A postal service certificate of mailing to the named insured at the insured's last known address is conclusive proof of mailing and receipt on the third calendar day after the mailing.

26.1-39-14. Five-day notice exception for cancellation of property and casualty policies. Policies subject to sections 26.1-39-10 through 26.1-39-21 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.

26.1-39-15. Statement of reasons for cancellation of property and casualty policies. The notice of cancellation must state or be accompanied by either a statement of the reason for cancellation, or a statement that upon written request of the named insured, the insurer will specify in writing the reason for cancellation. The written request must be mailed or delivered to the insurer at least ten days prior to the effective date of cancellation or if cancellation occurs pursuant to section 26.1-39-14, within ten days from the effective date of cancellation. The insurer shall mail or deliver the reason to the named insured within ten days after receipt of the written request.

26.1-39-16. Notification and statement of reasons for nonrenewal of property and casualty policies.

1. No insurer may fail to renew a property insurance policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the last known address of the named insured, at least thirty days prior to the

expiration date of the policy. A postal service certificate of mailing to the named insured at the insured's last known address is conclusive proof of mailing and receipt on the third calendar day after the mailing.

2. The insurer shall include a statement of the reasons for a nonrenewal with the notice, or shall furnish it upon the written request of the insured. The written request must be mailed or delivered to the insurer at least ten days prior to the expiration date of the policy. The insurer shall comply with such a request within ten days after receipt thereof.
3. No notice of intention not to renew is required where the named insured is given notice of the insurer's willingness to renew the policy by the mailing or delivering of a renewal notice, bill, certificate, or policy. If notice as required by this subsection is not provided, coverage is deemed to be renewed for the ensuing policy period upon payment of the appropriate premium under the same terms and conditions, and subject to subsection 1 of section 26.1-39-13, until the named insured has accepted the replacement coverage with another insurer or until the named insured has agreed to the nonrenewal.
4. Proof of mailing a notice of intention not to renew or business records of the notice of the insurer's willingness to renew must be retained for a period of not less than one year by the insurer or agent or broker giving the notice.

26.1-39-17. Prohibited reasons for declination or termination of property and casualty policies. The declination or termination of a property insurance policy subject to sections 26.1-39-10 through 26.1-39-21 by an insurer, agent, or broker is prohibited if the declination or termination is based upon any of the following reasons:

1. The race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured.
2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer that limits its market to one lawful occupation or profession or to several related lawful occupations or professions.
3. The age or location of the residence of the applicant or named insured unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.

4. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
5. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.

26.1-39-18. Declination or termination requirements for property and casualty policies - Enforcement - Penalties.

1. Whenever the commissioner, upon the filing of a complaint or through the commissioner's own investigation has reason to believe that an insurer, agent, or broker has engaged in practices which violate sections 26.1-39-10 through 26.1-39-21 and that a proceeding would be in the public interest, the commissioner shall conduct a hearing.
2. If after hearing, the commissioner determines that an insurer has violated subsection 1 of section 26.1-39-13, section 26.1-39-16, or section 26.1-39-17, the commissioner may require the insured to accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated, or reinstate insurance coverage to the end of the policy period, or continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated.
3. If the commissioner after hearing determines that any person has violated sections 26.1-39-10 through 26.1-39-21, the commissioner may issue a cease and desist order to restrain the person from engaging in practices that violate these sections or assess a penalty against the person of up to five hundred dollars for each violation of the sections or for each willful and knowing violation of these sections assess a penalty against such person of up to five thousand dollars or cancel, revoke, or refuse to renew a company's certificate of authority to do business in this state.
4. If the commissioner determines in a final order that an insurer has violated subsection 1 of section 26.1-39-13, section 26.1-39-16, or section 26.1-39-17, the applicant or named insured aggrieved by the violation may bring an action in a court of competent jurisdiction in this state to recover from the insurer any loss not otherwise recovered through insurance which would have been paid under the insurance coverage that was declined or terminated in violation of these sections.
5. Any amount recovered may not be duplicative of any recovery obtained through the exercise of any other

statutory, or common law claim for relief arising out of the same occurrence. No action under this section may be brought two years after the date of a final order of the commissioner finding a violation of subsection 1 of section 26.1-39-13 or section 26.1-39-16.

26.1-39-19. Immunity. There is no liability on the part of and no claim for relief arises against the commissioner, any insurer or its authorized representatives, agents, or employees, any licensed insurance agent or broker, or any person furnishing information to an insurer as to reasons for a termination or declination, for any communication giving notice of or specifying the reasons for a declination or termination or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for a declination or termination under these sections. This section does not apply to statements made in bad faith with malice in fact.

26.1-39-20. Duplicate coverage. If an insured obtains a replacement policy that provides equal or more extensive coverage for any property covered in both policies, the first insurer's coverage of the property may be terminated either by cancellation or nonrenewal. The termination is effective on the effective date of the policy providing duplicate coverage.

26.1-39-21. Renewal of property and casualty policies - Waiver - Estoppel. Renewal of a property insurance policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the policy providing duplicate coverage.

26.1-39-22. Termination of property and casualty insurance agency contracts. Any insurer authorized to transact property or casualty business in this state shall, upon termination of an agent's appointment by the insurer, permit the renewal and endorsement of all insurance contracts written by the agent for a period of one year from the date of the termination, as determined by the individual underwriting requirements of the insurer. If any contract does not meet the underwriting requirements, the insurer shall give the agent sixty days' notice of its intention not to renew the contract. This section does not apply if the contract is terminated because of the agent's failure, after receiving a written demand, to pay over moneys due the insurer.

SECTION 17. Chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-40-01. Definitions - Limitations. As used in sections 26.1-40-02 through 26.1-40-12:

1. "Declination" means the refusal of an insurer to issue a policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant. The offering of insurance coverage with a

company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage, or the offering of policy coverage or rates substantially less favorable than requested in the nonbinding application or written request for coverage, is a declination.

2. "Nonpayment of premium" means failure of the insured to discharge when due any of the insured's obligations in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.
3. "Policy" means any automobile policy which includes automobile liability coverage, uninsured 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.

"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.

4. "Renewal" or "to renew" means:
 - a. The issuance and delivery by an insurer of a policy replacing, at the end of the previous policy period, a policy previously issued and delivered by the same insurer;

- b. The issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; or
- c. The extension of the term of a policy beyond its policy period or term pursuant to a provision for extending the policy by payment of a continuation premium.

Any policy with a policy period or term of less than six months must be considered as if written for a policy period or term of six months except in case of termination under any of the circumstances specified in subsection 2 of section 26.1-40-05. Any policy written for a term longer than one year or any policy with no fixed expiration date must be considered as if written for successive policy periods or terms of one year and any termination by an insurer effective on an anniversary date of the policy is deemed a failure to renew.

- 5. "Termination" means either a cancellation or nonrenewal of automobile insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term. An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage is not a termination.

26.1-40-02. Cancellation of policy - Exclusive reasons.

- 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.

- 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.
- 2. During the policy period no modification of automobile physical damage coverage, except coverage for loss caused by collision, whereby provision is made for the application of a deductible amount not exceeding one hundred dollars is deemed a cancellation of the coverage or of the policy.
 - 3. Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.

26.1-40-03. Notice of cancellation. No insurer may exercise its right to cancel a policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least twenty days prior to the effective date of cancellation. When cancellation is for nonpayment of premium the

notice must be mailed or delivered to the named insured at the address shown in the policy at least ten days prior to the effective date of cancellation.

26.1-40-04. Statement of reason for cancellation. A notice of cancellation for nonpayment of premium must include or be accompanied by a statement of the reason for cancellation. Any other notice of cancellation must state or be accompanied by either a statement of the reason for cancellation, or a statement that upon written request of the named insured, the insurer will specify in writing the reason for cancellation. The written request must be mailed or delivered to the insurer at least ten days prior to the effective date of cancellation. The insurer shall mail or deliver the reason to the named insured within ten days after receipt of the written request. Failure to comply with the notice of cancellation provisions of section 26.1-40-03, or failure to furnish reasons for cancellation when required or requested is sufficient cause for the commissioner to cancel, revoke, or refuse to renew that company's certificate of authority to do business in this state.

26.1-40-05. Nonrenewal - Notice - Statement of reasons - Nonrenewal not to be based on certain facts.

1. No insurer may fail to renew a policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least thirty days prior to the expiration date of the policy or anniversary date of a policy written for a term longer than one year or with no fixed expiration date. The insurer shall include a statement of the reasons for nonrenewal with the notice, or shall furnish it upon the written request of the insured mailed or delivered to the insurer at least ten days prior to the expiration date of the policy. The insurer shall comply with such a request within ten days after receipt thereof.
2. Subsection 1 does not apply:
 - a. If the insurer has manifested in any way its willingness to renew;
 - b. In case of nonpayment of premium for the expiring policy; or
 - c. If the insured fails to pay the premium as required by the insurer for renewal.

26.1-40-06. Notification of possible eligibility for assigned risk policy. When a policy is canceled, other than for nonpayment of premium, or in the event of failure to renew a policy to which subsection 1 of section 26.1-40-05 applies, the insurer shall notify the named insured of the insured's possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification must accompany or be included in

the notice of cancellation or nonrenewal required by sections 26.1-40-03 and 26.1-40-05.

26.1-40-07. Proof of notice of termination. A postal service certificate of mailing to the named insured at the address shown in the policy is sufficient proof of notice. Proof of mailing a notice of cancellation or a notice of an intention not to renew, or business records of the notice of the insured's willingness to renew, must be retained for a period of one year by the insurer or agent or broker giving the notice.

26.1-40-08. Reason for cancellation or nonrenewal - Nonliability of parties. The specific reason for cancellation or nonrenewal which is furnished to the insured does not constitute grounds for any claim for relief against the insurer or the insured's authorized representative, or its agents or employees, or any person who in good faith furnishes to the insurer the information upon which the reasons for cancellation or nonrenewal are based.

26.1-40-09. Termination of coverage when another policy in force. Notwithstanding the failure of an insurer to comply with sections 26.1-40-01 through 26.1-40-12, termination of any coverage under the policy either by cancellation or nonrenewal is effective on the effective date of any other policy providing similar coverage on the same motor vehicle or any replacement of the motor vehicle.

26.1-40-10. Notification and reasons for a declination.

1. Upon declining an application or written request for a policy, the insurer making the declination shall either provide the insurance applicant with the specific reasons in writing for the declination at the time of the declination or advise the applicant in writing that specific written reasons for the declination will be provided within twenty-one days of the timely receipt by the insurer making the declination of the applicant's written request for the reasons. An applicant's written request is timely under this subsection if received within ninety days of the date of the notice to the applicant.
2. No insurer not represented by an agent or broker may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the insurer.
3. No agent or broker, for any reason set out in section 26.1-40-11, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the agent, broker, or insurer.

26.1-40-11. Terminations - Declinations - Prohibited reasons. The declination of an application for, or the termination of, a policy

by an insurer, agent, or broker is prohibited if the declination or termination is:

1. Based upon the race, religion, nationality, or ethnic group, of the applicant or named insured.
2. Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision does not apply to any insurer, agent, or broker which limits its market to one lawful occupation or profession or to several related lawful occupations or professions.
3. Based upon the principal location of the insured motor vehicle unless such decision is for a business purpose which is not mere pretext for unfair discrimination.
4. Based solely upon the age, sex, or marital status of an applicant or an insured, except that this subsection does not prohibit rating differentials based upon age, sex, or marital status.
5. Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.
6. Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

26.1-40-12. Sanctions. If the commissioner after hearing determines that an insurer has violated section 26.1-40-02, 26.1-40-10, or 26.1-40-11, the commissioner may require the insurer to: accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to its other risks with similar characteristics, or reinstate insurance coverage to the end of the policy period; or continue insurance coverage at a rate and on the same terms and conditions as are available to its other risks with similar characteristics. If the commissioner has determined, after hearing, that any person has violated sections 26.1-40-02 through 26.1-40-12, the commissioner may: issue a cease and desist order to restrain the person from engaging in practices which violate these sections, or assess a penalty against the person of up to five hundred dollars for each violation, or assess a penalty against the person of up to five thousand dollars for each willful and knowing violation, or cancel, revoke, or refuse to renew a company's certificate of authority to do business in this state.

26.1-40-13. "Uninsured motor vehicle" defined - Includes insolvent insurer. For the purposes of sections 26.1-40-13 through 26.1-40-15, "uninsured motor vehicle" means any motor vehicle not subject to insurance providing at least the bodily injury and death limits set forth in section 39-16.1-11 and includes an insured motor vehicle where the liability insurer is unable to make payment with respect

to the legal liability of its insured within the specified limits because of insolvency.

26.1-40-14. Uninsured motorist coverage - Compulsory - Stacking not permitted.

1. No motor vehicle liability insurance policy against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of ownership, maintenance, or use of any motor vehicle may be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto in amounts not less than that set forth in section 39-16.1-11 for bodily injury or death for the protection of insureds who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.
2. Any motor vehicle liability insurance policy which provides uninsured motorist coverage, as specified in subsection 1, must provide that an insured or named insured is only protected to the extent of the coverage provided on the vehicle covered by the policy and involved in the accident. If no such vehicle is involved, coverage is only available to the extent of the applicable uninsured motorist coverage provided on any of the insured or named insured's vehicles. In either instance, coverage on any other vehicle may not be added or stacked upon the applicable coverage.

26.1-40-15. Rights of insurer making payments under uninsured motorist coverage. In the event of payment by an insurer to any person under the uninsured motorist coverage, the insurer making the payments is, to the extent thereof, entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the damage for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer. This section does not allow any insurer a claim for relief against or recovery from the unsatisfied judgment fund.

26.1-40-16. Exclusion of spouse of named insured. No insurer is responsible under a private passenger automobile insurance policy covering an automobile registered or principally garaged in this state from any liability for any claims resulting from the operation of the motor vehicle by a spouse of the named insured who resides in the same household if an endorsement on the policy excludes that spouse from coverage under the policy and the spouse excluded signs the endorsement. If the named insured expressly or impliedly consents to the operation of a secured motor vehicle by a spouse excluded under the policy, the named insured is not relieved of

personal liability as provided by subsection 5 of section 26.1-41-02.

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, 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.

26.1-40-18. Automobile warranties construed. An automobile warranty issued by anyone other than the automobile manufacturer or dealer is a contract of insurance and all warranties must be on a contract form prescribed or approved by the commissioner.

26.1-40-19. Certificate of authority to issue automobile warranty policy - Issuance - Qualifications - Renewal. No person may engage in the business of providing or writing automobile warranty insurance without a certificate of authority to issue automobile warranty insurance policies. The commissioner may not issue a certificate of authority unless the commissioner is satisfied that the person is qualified in accordance with the laws of this state governing insurance companies, to transact business in this state. A certificate of authority remains in force in perpetuity if the required renewal fee is paid and the commissioner is satisfied that the requirements of law are met.

26.1-40-20. Automobile warranties considered insurance - Surety bond. Any person engaged in the issuance of car warranty insurance policies is an insurance company and is subject to the fees

specified by law to be paid by insurance companies. Before an automobile warranty insurance company receives a certificate of authority to transact business in this state, the company shall file with the commissioner a cash surety bond in the sum of one hundred thousand dollars on the form prescribed by the commissioner.

26.1-40-21. Revocation of certificate of authority. The commissioner may revoke the certificate of authority of any person engaged in the sale of automobile warranty insurance when the commissioner determines that a breach of warranty contract has occurred.

26.1-40-22. Penalty. Any person violating sections 26.1-40-18 through 26.1-40-21 is guilty of a class A misdemeanor.

SECTION 18. Chapter 26.1-41 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-41-01. Definitions. As used in this chapter:

1. "Accidental bodily injury" means bodily injury, sickness, or disease, including death resulting therefrom, arising out of the operation of a motor vehicle, and which is accidental as to the person claiming basic or optional excess no-fault benefits.
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 fifteen 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 thousand dollars for funeral, cremation, and burial expenses.
3. "Basic no-fault insurer" means an insurer or a qualified self-insurer.
4. "Bus" means:
 - a. Any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
 - b. Any motor vehicle owned by a charitable, religious, educational, or governmental corporation or organization designed for carrying more than ten

passengers and used for the transportation of persons not for compensation.

5. "Dependent survivors" means the surviving spouse of a deceased injured person if residing in the deceased's household at the time of the deceased's death, and other persons receiving support from the deceased injured person at the time of the deceased's death which would qualify them as dependents of the deceased for federal income tax purposes under the federal Internal Revenue Code. The dependency of a surviving spouse terminates upon remarriage.
6. "Disability" means the inability to engage in substantially all of the injured person's usual and customary daily activities.
7. "Economic loss" means medical expenses, rehabilitation expenses, work loss, replacement services loss, survivors' income loss, survivors' replacement services loss, and funeral, cremation, and burial expenses.
8. "Injured person" means a person who sustains accidental bodily injury.
9. "Medical expenses" means reasonable charges incurred for necessary medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or services for remedial treatment and care rendered in accordance with a recognized religious healing method. Medical expenses do not include that portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility, or any similar facility in excess of the reasonable and customary charge for semiprivate accommodations unless intensive care is medically needed.
10. "Motor vehicle" means a vehicle having more than three load-bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
11. "Noneconomic loss" means pain, suffering, inconvenience, and other nonpecuniary damage recoverable under the tort law of this state.
12. "Occupying" means to be in or upon a motor vehicle or engaged in the immediate act of entering into or alighting from the motor vehicle.

13. "Operation of a motor vehicle" means operation, maintenance, or use of a motor vehicle as a vehicle. Operation of a motor vehicle does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the injury occurs off the business premises, or conduct in the course of loading and unloading the vehicle unless the injury occurs while occupying it.
14. "Owner" means the person in whose name the motor vehicle has been registered. If ownership has been transferred, but the registration record has not been changed, "owner" means the person, other than a lienholder, to whom ownership has been transferred. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person, other than a lienholder, who holds the legal title to the motor vehicle. If the motor vehicle is the subject of a security agreement with the debtor having the right to possession, a lease with an option to purchase with the lessee having the right to possession, or a lease with a term of six months or more with the lessee having the right to possession, "owner" means the debtor or lessee.
15. "Pedestrian" means any person not occupying any vehicle designed to be driven or drawn by power other than muscular power.
16. "Rehabilitation expense" means the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to medical or occupational rehabilitation.
17. "Relative" means any of the following residing in the same household as the owner: a person related to the owner by blood, marriage, or adoption, or a foster child. A person resides in the same household if that person usually makes a home in the same family unit, even though temporarily living elsewhere.
18. "Replacement services loss" means expenses not exceeding fifteen dollars per day in obtaining ordinary and necessary services from others not members of the injured person's household in lieu of those that the injured person would have performed had the injured person not been injured, not for income but for the benefit of the injured person or the injured person's household. Replacement services loss does not include any loss after the death of an injured person.

19. "Secured motor vehicle" means a motor vehicle with respect to which the security required by this chapter was in effect at the time of its involvement in the accident resulting in accidental bodily injury.
20. "Secured person" means the owner, operator, or occupant of a secured motor vehicle, and any other person legally responsible for the acts or omissions of the owner, operator, or occupant.
21. "Serious injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of one thousand dollars. An injured person who is furnished the services in subsection 9 without charge or at less than the average reasonable charge for the service in this state is deemed to have sustained a serious injury if a court determines that the fair and reasonable value of the services exceeds one thousand dollars.
22. "Survivors' income loss" means loss sustained after an injured person's death by dependent survivors during their dependency and consisting of the loss of the contributions they would have received for their support from the decedent out of income from work the decedent would normally have performed had the decedent not died.
23. "Survivors' replacement services loss" means expenses, not to exceed fifteen dollars per day after the injured person's death, by dependent survivors in obtaining ordinary and necessary services from others not members of the decedent's household in lieu of the services the decedent would have performed not for income but for the benefit of the decedent's household.
24. "Work loss" means eighty-five percent of loss of income from work an injured person who would normally be employed in gainful activity during the period of disability, would have performed had the person not been injured, reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work that the injured person was capable of performing but unreasonably failed to undertake. Work loss does not include any loss after death of an injured person.

26.1-41-02. Security requirements - Authority of registrar of motor vehicles.

1. The owner of a motor vehicle required to be registered in this state, or the owner of a motor vehicle operated in this state by the owner or with the owner's permission, shall continuously provide with respect to the motor

vehicle during the period in which operation is contemplated in this state security for payment of basic no-fault benefits and the liabilities covered under the motor vehicle liability insurance.

2. The security may be provided by an insurance policy complying with this chapter issued by an insurer authorized to transact business in this state, or, by self-insurance as approved by the commissioner.
3. If the motor vehicle is registered in another state, the security may be provided by an insurance policy issued by an insurer authorized to transact business in either this state or the state in which the motor vehicle is registered, or, by self-insurance as approved by the insurance department of the state in which the motor vehicle is registered.
4. The owner of any motor vehicle who operates it or permits it to be operated in this state when the owner knows or should know that the owner has failed to comply with the requirement that the owner provide security under this chapter shall have the motor vehicle registration revoked or suspended in accordance with procedures established by the registrar of motor vehicles under the motor vehicle law of this state until the owner provides the security required by this chapter.
5. An owner of a motor vehicle with respect to which security is required who fails to have the security in effect at the time of an accident is absolutely liable at law for payment of basic no-fault benefits, and has all the rights and obligations of a basic no-fault insurer under this chapter. This remedy is in addition to any other remedy that an injured person may have against the owner.
6. An insurance policy which purports to provide coverage for basic no-fault benefits or is sold with the representation that it fulfills the requirements of security as required by this chapter is deemed to include all coverage required by this chapter.
7. The registrar of motor vehicles may supervise the enforcement of the compulsory security requirements of this chapter and may adopt the rules necessary in respect to the maintenance of the requirements.

26.1-41-03. Suspension of coverage - Written request by owner. Upon receipt from the owner of a secured motor vehicle, of a signed written request for suspension stating that the secured motor vehicle will not be operated on public roads or highways during a period of not less than thirty consecutive days, the basic no-fault insurer of the vehicle shall suspend on a pro rata basis or shall offer a similar credit, to the extent requested by the owner,

insurance coverage afforded under the policy providing the security for payment of basic no-fault benefits and the liabilities covered under the motor vehicle liability insurance for the secured motor vehicle until notified in writing by the owner that the coverage should be reinstated. The owner may not be required to surrender the number plates during the policy suspension period. During the period of suspension, subsections 1, 2, 4, 5, 6, and 7 of section 26.1-41-02 do not apply with respect to the secured motor vehicle, but if the secured motor vehicle is operated by or with the permission of the owner during the period of suspension, subsections 1, 2, 4, 5, and 7 of section 26.1-41-02 become applicable. This section does not apply to an owner of a secured motor vehicle for which proof of financial responsibility is required under the financial responsibility laws of this state.

26.1-41-04. Optional excess no-fault benefits. Each basic no-fault insurer of the owner of a secured motor vehicle shall also make available optional excess no-fault benefits for excess economic loss commencing upon the exhaustion of basic no-fault benefits, up to a total of forty thousand dollars in no-fault benefits for accidental bodily injury to any one person in any one accident. A basic no-fault insurer may also offer benefits and limits other than those prescribed in this section, and a basic no-fault insurer may incorporate in optional excess no-fault coverage the terms, conditions, and exclusions as may be consistent with the premiums charged. The amounts payable under optional excess no-fault benefits may be duplicative of benefits received from any collateral sources or may be written in excess of such collateral source benefits, or may provide for reasonable waiting period, deductibles, or coinsurance provisions. The optional excess no-fault benefits of a basic no-fault insurer may provide for subrogation to the injured person's right of recovery against any responsible third party.

26.1-41-05. Self-insurance - Liability policies - Authority of commissioner.

1. Self-insurance used as security required by this chapter may be provided by filing in satisfactory form all of the following:
 - a. A continuing undertaking by the owner or other appropriate person to pay basic no-fault benefits and the liabilities covered by motor vehicle liability insurance and to perform all other obligations imposed by this chapter.
 - b. Evidence that appropriate provision exists for the prompt and efficient administration of all claims, benefits, and obligations provided by this chapter.
 - c. Evidence that reliable financial arrangements, deposits, or commitments exist providing assurance for payment of basic no-fault benefits and the liabilities covered by motor vehicle liability insurance and all

other obligations imposed by this chapter substantially equivalent to those afforded by an insurance policy that would comply with this chapter.

2. Every insurer authorized to transact the business of motor vehicle liability insurance in this state shall file with the commissioner as a condition of its continued transaction of business in this state a form declaring that its motor vehicle liability policies wherever issued are deemed to provide the security required by this chapter when the motor vehicle is operated in this state. Any nonadmitted insurer may file this form.
3. The commissioner may adopt necessary rules not inconsistent with this chapter. The commissioner may provide schedules of reasonable maximum benefits payments for specified medical services and rehabilitation expenses which basic no-fault insurers may incorporate into their policies of basic or optional excess coverages afforded pursuant to this chapter.

26.1-41-06. Persons entitled to basic no-fault benefits. Each basic no-fault insurer of a secured motor vehicle shall pay basic no-fault benefits without regard to fault for economic loss resulting from:

1. Accidental bodily injury sustained in the United States or its possessions or in Canada by the owner of the motor vehicle or any relative of the owner:
 - a. While occupying any motor vehicle, or
 - b. While a pedestrian as the result of being struck by a motor vehicle or motorcycle.
2. Accidental bodily injury sustained by any other person while occupying the secured motor vehicle if the accident occurs in the United States or its possessions or in Canada.
3. Accidental bodily injury sustained by any pedestrian in this state as a result of being struck by the secured motor vehicle.

26.1-41-07. Persons not entitled to benefits. Basic or optional excess no-fault benefits are not payable to or on behalf of any person while:

1. Occupying any motor vehicle without the expressed or implied consent of the owner or while not in lawful possession of the motor vehicle.
2. Occupying a motor vehicle owned by such person which is not insured for the benefits required by this chapter unless uninsured solely because the insurance company of

the owner has not filed a form pursuant to subsection 2 of section 26.1-41-05 to provide the basic no-fault benefits required by this chapter.

3. During a racing or speed contest, or in practicing or preparing for a racing or speed contest.
4. Intentionally causing or attempting to cause injury to oneself or another person.

26.1-41-08. Secured person exemption.

1. In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person is exempt from liability to pay damages for:
 - a. Noneconomic loss unless the injury is a serious injury.
 - b. Economic loss to the extent of all basic no-fault benefits paid or to become payable for such injury under this chapter after subtracting the same elements of loss recoverable under any workmen's compensation law.
2. The exemption under subsection 1 does not apply unless the person who has sustained accidental bodily injury is a person who may qualify for basic no-fault benefits pursuant to section 26.1-41-06 and who is not excluded under section 26.1-41-07.

26.1-41-09. Payment of basic and optional excess no-fault benefits.

1. Basic and optional excess no-fault benefits are payable monthly for economic loss sustained by an injured person or dependent survivors or incurred on the injured person's behalf by the injured person's spouse, relatives, or guardian. A basic no-fault insurer may pay basic or optional excess no-fault benefits when due to the above persons who it believes have sustained or incurred the economic loss or at its option to the person rendering, for a charge, the services for which the benefits are payable. If the injured person dies, a basic no-fault insurer may pay the benefits due directly to those entitled to the benefits without the appointment of a personal representative and unless a court directs otherwise, may pay all benefits for survivors' income loss or replacement services loss to the surviving spouse for the use and benefit of all dependent survivors. A basic no-fault insurer's payments made in good faith in accordance with this chapter discharges its liability to the extent of the payments unless the basic no-fault

insurer has been notified in writing of the claim of some other person prior to the making of any of the payments.

2. Basic and optional excess no-fault benefits are overdue if not paid within thirty days after the basic no-fault insurer receives reasonable proof of the fact and the amount of loss sustained, except that the basic no-fault insurer may accumulate claims for periods not exceeding one month, and the benefits are not overdue if paid within twenty days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after the proof is received by the basic no-fault insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after proof is received by the basic no-fault insurer. Payment is deemed made on the date of mailing. All overdue payments must bear interest at the rate of eighteen percent per annum.

26.1-41-10. Assignment of nonmedical benefits unenforceable - Exemption of benefits from process. An agreement for assignment of any right to nonmedical benefits payable in the future is unenforceable. Basic no-fault benefits are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt under any applicable law exempting wages or earnings from process or claims.

26.1-41-11. Mental and physical examinations. Whenever the mental or physical condition of a person is material to any claim that has been or may be made for past or future basic or optional excess no-fault benefits, the person shall submit to mental or physical examination by a physician designated by the basic no-fault insurer at a reasonably convenient location. Basic no-fault insurers are authorized to include reasonable provisions of this nature in policies providing basic or excess no-fault benefits.

26.1-41-12. Discovery of facts about an injured person.

1. Every employer or claimant shall, if a written request is made by a basic no-fault insurer against whom a claim has been made, furnish forthwith, in a form approved by the commissioner of insurance, a sworn statement of the earnings since the time of the accidental bodily injury and for a twelve-month period before the injury, of the person upon whose injury the claim is based.
2. Every physician, coroner or medical officer, hospital, clinic, or other medical institution providing, before or after an accidental bodily injury upon which a claim for basic or optional excess no-fault benefits is based, any products, services, or accommodations in relation to the injury, or in relation to a condition claimed to be connected with the injury, shall, if requested in writing

to do so by the basic no-fault insurer against whom the claim has been made:

- a. Promptly furnish a written report of the history, condition, treatment, and dates and costs of treatment.
 - b. Permit the inspection and copying of its records regarding the history, condition, treatment, and dates and costs of treatment.
 - c. Promptly furnish autopsy reports.
3. In the event of any dispute regarding a basic no-fault insurer's right to discovery of facts about an injured person's earnings or about history, condition, treatment, and dates and costs of such treatment, a court of record may enter an order for such discovery as justice requires.

26.1-41-13. Priority of applicable security - Coordination of benefits.

1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any workmen's compensation law must be subtracted from the basic no-fault benefits otherwise payable for the injury.
2. As between applicable security basic no-fault benefits are payable as follows:
 - a. As to any person injured while occupying a secured motor vehicle, or injured as a pedestrian by a secured motor vehicle, the basic no-fault insurer of the secured motor vehicle shall pay the benefits.
 - b. As to any person who is injured while occupying an unsecured motor vehicle, or while being struck as a pedestrian by an unsecured motor vehicle, the basic no-fault insurer affording the benefits to the injured person shall pay the benefits.
 - c. As to any person injured while occupying a bus that is a secured motor vehicle, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the bus shall pay the benefits.

- d. As to any person injured while occupying a secured motor vehicle that is transporting persons under a ridesharing arrangement, as defined in section 8-02-07, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the secured motor vehicle shall pay the benefits.
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. An insurer, health maintenance organization, or nonprofit health service corporation 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.

26.1-41-14. Stacking of basic no-fault benefits prohibited. When an injured person is provided basic no-fault benefits by an insurance policy issued in compliance with this chapter, the injured person is covered only to the extent of the basic no-fault benefits provided on the secured motor vehicle involved in the accident. If any person is injured while occupying an unsecured motor vehicle, basic no-fault benefits are only available to the extent of the applicable basic no-fault benefits provided to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle. In either instance, basic no-fault benefits on any secured motor vehicle may not be added or stacked upon basic no-fault benefits available from any other source.

26.1-41-15. Motor vehicle liability insurance - Extraterritorial provision.

1. Motor vehicle liability insurance applies to the amounts which the owner is legally obligated to pay as damages because of accidental bodily injury and accidental property damage arising out of the ownership or operation of a motor vehicle, if the accident occurs in the United States or its possessions or in Canada. Motor vehicle liability insurance must afford limits of liability not less than those required under the financial responsibility laws of this state. Customary terms and conditions applicable to motor vehicle liability insurance apply.
2. If the accident occurs outside this state but in the United States or its possessions or in Canada:

- a. If the limits of liability of the financial responsibility or compulsory insurance laws of the applicable jurisdiction exceed the limits of liability of the financial responsibility laws of North Dakota, the motor vehicle liability insurance is deemed to comply with the limits of liability of the laws of the applicable jurisdiction.
- b. If the limits of no-fault benefits of the applicable jurisdiction exceed the limits provided under this chapter for no-fault benefits, the no-fault benefits are deemed to comply with the limits of the benefits of the laws of the applicable jurisdiction.

26.1-41-16. Insurer's right of subrogation. A basic no-fault insurer which has paid or may become obligated to pay basic no-fault benefits under this chapter is subrogated to the extent of its obligations to all of the rights of the injured person against any person other than a secured person. The subrogee has a lien to the extent of its obligations, and no release of rights is effective against the rights without the subrogee's consent.

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.

26.1-41-18. Assigned claims plan.

1. Basic no-fault insurers authorized to provide basic no-fault benefits in this state shall organize, participate in, and maintain an assigned claims plan to provide that an injured person who suffers economic loss and is eligible for basic no-fault benefits under section 26.1-41-06, other than a person not entitled to benefits under section 26.1-41-07, may obtain basic no-fault benefits through the plan if:

- a. Basic no-fault benefits are not applicable to the injury for some reason other than those specified in section 26.1-41-07; or
- b. Basic no-fault benefits applicable to the injury are inadequate to provide the contracted-for benefits because of financial inability of a basic no-fault insurer to fulfill its obligations.

Payments made by the assigned claims plan pursuant to this subsection constitute covered claims under chapter 26.1-42.

2. If a claim qualifies for assignment under this section, the assigned claims plan or any basic no-fault insurer to whom the claim is assigned is subrogated to the rights of the claimant against any person liable, and against any basic no-fault insurer, its successor in interest, or substitute legally obligated to provide basic no-fault benefits to the claimant, for basic no-fault benefits provided by the assignment.
3. The assigned claims plan must contain any rules for the operation of the plan and for the equitable distribution of costs as may be approved by the commissioner. Any claim brought through the plan must be assigned to a basic no-fault insurer in accordance with the rules and the insurer, after assignment, has the rights and obligations it would have had if prior to the assignment it has issued security providing basic no-fault benefits applicable to the loss. Any person accepting benefits under this sections has the rights and obligations as that person would have had under security issued to that person providing basic no-fault benefits.
4. Any person who sustains accidental bodily injury while an occupant in or as a result of being struck by any motor vehicle is not eligible for benefits under the assigned claims plan if the person owned a motor vehicle on the date of loss and failed to provide continuous security for the motor vehicle as required by section 26.1-41-02.
5. Any person who requests suspension of coverage in accordance with section 26.1-41-03 is not ineligible for assigned claims plan benefits while the suspension is in effect if bodily injury is sustained while an occupant in or as a result of being struck by a motor vehicle not owned by that person.

26.1-41-19. Limitation of actions.

1. If no basic or optional excess no-fault benefits have been paid for loss, an action for the benefits may be commenced not later than two years after the injured person suffers

- the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier. If basic or optional excess no-fault benefits have been paid for loss, an action for recovery of further benefits for the loss by either the same or another claimant, may be commenced not later than two years after the last payment of benefits.
2. If no basic or optional excess no-fault benefits have been paid to the decedent or dependent survivors, an action for benefits for survivors' income loss and replacement services loss and funeral and burial expenses may be commenced not later than one year after the death or four years after the accident from which death results, whichever is earlier. If survivors' income loss and replacement services loss benefits have been paid to any dependent survivor, an action for recovery of further survivors' income loss or replacement services loss benefits by either the same or another claimant may be commenced not later than two years after the last payment of benefits. If basic or optional excess no-fault benefits have been paid for loss suffered by an injured person before the injured person's death resulting from the injury, an action for recovery of survivors' income loss or replacement services loss benefits may be commenced not later than one year after the death or four years after the last payment of benefits, whichever is earlier.
 3. Except as subsection 1 or 2 prescribes a longer period, an action by a claimant on an assigned claim which has been timely presented may be commenced not later than sixty days after the claimant received written notice of rejection of the claim by the basic no-fault insurer to which it was assigned.
 4. The time period limitations prescribed in this section govern all actions for basic and optional excess no-fault benefits under this chapter notwithstanding any limitation prescribed elsewhere in the laws of this state.

SECTION 19. Chapter 26.1-42 of the North Dakota Century Code is hereby created and enacted to read 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, 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.

26.1-42-02. Definitions. As used in this chapter:

1. "Association" means the North Dakota insurance guaranty association.
2. "Board" means the board of directors of the association.
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.
4. "Insolvent insurer" means an insolvent insurer who has been issued a certificate of authority to transact insurance in this state either at the time the policy was issued or when the insured event occurred, and determined to be insolvent by a court of competent jurisdiction.
5. "Member insurer" means any person, except a county mutual insurance company, who writes any kind of insurance to which this chapter applies under section 26.1-42-01, including the exchange of reciprocal or interinsurance contracts, and is licensed to transact insurance in this state.
6. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

26.1-42-03. Creation of the North Dakota insurance guaranty association.

There is created a nonprofit unincorporated legal entity to be known as the North Dakota insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under its plan of operation and shall exercise its powers through a board of directors.

26.1-42-04. Board of directors. The board of directors of the association must consist of no fewer than five nor more than nine persons serving terms as established in the plan of operation. The member insurers shall select the members of the board, subject to

the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term in the same manner as initial appointments. In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as board members.

26.1-42-05. Powers, duties, and authority of the association.

1. The association shall:

- a. Be obligated to the extent of the covered claims of insolvent insurers existing (1) prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or (2) before the policy expiration date if less than thirty days after the determination, or (3) before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the determination. The obligation includes only that amount of each covered claim in excess of one hundred dollars and less than three hundred thousand dollars. The association may not be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer.
- b. Be deemed the insolvent insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.
- c. Assess member insurer's amounts necessary to pay the obligations of the association under subdivision a subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 26.1-42-10, and other expenses authorized by this chapter. Each member insurer assessment must be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer must be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available must be prorated and the unpaid portion must be paid as soon thereafter as funds become available. The

association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of the claims by the member insurer.

- d. Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation. The association shall deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested.
 - e. Notify such persons as the commissioner directs under subdivision a of subsection 2 of section 26.1-42-09.
 - f. Handle claims through its employees, through one or more insurers, or through other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner and may be declined by a member insurer.
 - g. Reimburse each servicing facility for association obligations it pays and for the expenses it incurs handling association claims. The association shall also pay the other expenses of the association authorized by this chapter.
2. The association may:
- a. Employ or retain personnel to handle claims and perform its other duties.
 - b. Borrow funds necessary to effect this chapter in accord with the plan of operation.
 - c. Sue or be sued.
 - d. Negotiate and become a party to contracts necessary to carry out this chapter.
 - e. Refund to the member insurers in proportion to their contribution to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board finds

that the association's assets exceed the board's estimate of its liabilities for the coming year.

- f. Perform other acts as are necessary or proper to effectuate this chapter.

26.1-42-06. Tax exemption. The association is exempt from payment of all fees and taxes levied by this state or any of its subdivisions except taxes levied on property.

26.1-42-07. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this chapter applies must include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. These rates may not be determined to be excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

26.1-42-08. Plan of operation.

1. The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments become effective upon approval in writing by the commissioner. If the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt reasonable rules necessary or advisable to effectuate this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.
2. All member insurers shall comply with the plan of operation.
3. The plan of operation shall:
 - a. Establish the procedures whereby all the powers and duties of the association under section 26.1-42-05 will be performed.
 - b. Establish procedures for handling assets of the association.
 - c. Establish the amount and method of reimbursing members of the board under section 26.1-42-04.
 - d. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer are deemed notice to the association or its agent. A list

- of these claims must be periodically submitted to the association or similar organization in another state by the receiver or liquidator.
- e. Establish regular places and times for meetings of the board.
 - f. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board.
 - g. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.
 - h. Establish the procedures whereby selections for the board will be submitted to the commissioner.
 - i. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
4. The plan of operation may provide that any or all powers and duties of the association, except those under subdivision c of subsection 1 and subdivision b of subsection 2 of section 26.1-42-05, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization must be reimbursed as a servicing facility would be reimbursed and must be paid for its performance of any other association functions. A delegation under this subsection takes effect only with the approval of the board and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

26.1-42-09. Duties and powers of the commissioner.

1. The commissioner shall:
 - a. Notify the association of the existence of an insolvent insurer not later than three days after the commissioner receives notice of the determination of the insolvency.
 - b. Upon request of the board, provide the association with a statement of the net direct written premiums of each member insurer.
2. The commissioner may:

- a. Require the association to notify insureds of the insolvent insurer and other interested parties of the determination of insolvency and of their rights under this chapter. The notification must be by mail at their last known address, where available. If sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.
- b. Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. The fine may not exceed five percent of the unpaid assessment per month, except that no fine may be less than one hundred dollars per month.
- c. Revoke the designation of any servicing facility if the commissioner finds that claims are being handled unsatisfactorily.

26.1-42-10. Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

1. The board, upon majority vote, shall notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.
2. The board may, upon majority vote, request the commissioner to order an examination of any member insurer the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a national association of insurance commissioners examination or by persons the commissioner designates. The association shall pay the cost of the examination, and the examination report must be treated as other examination reports. The examination report may not be released to the board prior to its release to the public, but this does not preclude the commissioner from complying with subsection 3. The commissioner shall notify the board when the examination is completed. The commissioner shall keep the request for an examination on file but the request is not open to public inspection prior to the release of the examination report to the public.
3. The commissioner shall report to the board when the commissioner has reasonable cause to believe that any

member insurer examined or being examined at the request of the board may be insolvent or in a financial condition hazardous to the policyholders or the public.

4. The board may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. The reports and recommendations are not public documents.
5. The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.
6. The board shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of the insolvency, based on the information available to the association, and submit it to the commissioner.

26.1-42-11. Effect of paid claims.

1. Any person recovering under this chapter is deemed to have assigned that person's rights under the policy to the association to the extent of that person's recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association as if it were the insolvent insurer. The association has no claim for relief against the insured of the insolvent insurer for any sums the association has paid out except such causes of action as the insolvent insurer would have had. In the case of an insolvent insurer operating on a plan with assessment liability, payment of claims of the association does not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.
2. The receiver, liquidator, or statutory successor of an insolvent insurer is bound by settlements of covered claims by the association or a similar organization in another state. A court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled, in the absence of this chapter, against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims must be accorded the same priority as the liquidator's expenses.
3. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which preserves the rights of the association against the assets of the insolvent insurer.

26.1-42-12. Nonduplication of recovery.

1. Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, is required to exhaust first the right under the policy. Any amount payable on a covered claim under this chapter must be reduced by the amount of any recovery under the insurance policy.
2. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if it is a first party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property. Any recovery under this chapter must be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

26.1-42-13. Stay of proceedings - Reopening default judgments. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state must be stayed for sixty days from the date insolvency is determined to permit proper defense by the association of all pending claims for relief. As to any covered claim arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of the insured, may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding, and must be permitted to defend against the claim on the merits.

26.1-42-14. Examination of the association - Annual report. The association is subject to examination and regulation by the commissioner. The board shall submit, not later than March first of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

26.1-42-15. Immunity. There is no liability on the part of and no claim for relief of any nature may arise against any member insurer, the association or its agents and employees, the board, or the commissioner or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this chapter.

SECTION 20. Chapter 26.1-43 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-43-01. "Legal expense insurance" defined. Legal expense insurance, as authorized in this title, means insurance which involves the assumption of a contractual obligation to reimburse the

beneficiary against or on behalf of the beneficiary, all or a portion of the beneficiary's fees, cost, or expenses related to or arising out of services by or under the supervision of an attorney licensed to practice law in this state, regardless of whether the payment is made by the beneficiaries individually or by a third party for them.

26.1-43-02. What legal expense insurance does not include. Legal expense insurance does not include the provision of or reimbursement for legal services incidental to other insurance coverages.

26.1-43-03. Legal plans and contracts excepted from insurance code. Unless otherwise provided, this title does not apply to:

1. Plans licensed under chapter 26.1-19.
2. Retainer contracts made by attorneys with individual clients with fees based upon an estimate of the nature and amount of services to be provided to a specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.
3. Employee welfare benefit plans as defined by the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829].

SECTION 21. Chapter 26.1-44 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-44-01. Surplus line insurance valid. Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this chapter are valid and enforceable as to all parties, and must be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

26.1-44-02. Affidavit as prerequisite of insurance - Contents. A surplus lines insurance broker licensed under chapter 26.1-26 shall in every case execute and file with the commissioner within fifteen days of the effective date of any surplus line insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract or bond from an insurer not authorized to do business in this state.

26.1-44-03. Surplus lines in solvent insurers. A surplus lines insurance broker may not knowingly place surplus line insurance with an insurer that is financially unsound. The surplus lines insurance

broker shall ascertain the financial condition of the unauthorized insurer before placing insurance with the insurer. The surplus lines insurance broker may not so insure with:

1. Any insurer having less than five hundred thousand dollars of capital and five hundred thousand dollars in surplus, if a stock company, and five hundred thousand dollars in surplus, if a mutual company.
2. Any alien insurer that has not established an effective trust fund of at least one million dollars within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

26.1-44-04. Service of process. Any insurer desiring to transact any business under this chapter, by any surplus lines insurance broker in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

26.1-44-05. Endorsement of policy. Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER SURPLUS LINES BROKER'S LICENSE NO. ----- THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance broker shall properly complete and sign the endorsement.

26.1-44-06. Record of business - Filing of statement - Content. Every surplus lines insurance broker shall keep a separate account of the business under the broker's license and on or before the first day of April in each year shall file with the commissioner a statement for the twelve months preceding, giving the name of the insured to whom a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each insurer issuing the policy or contract, the amount of the insurance, the rates charged, the gross premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such information and upon such form as required by the commissioner, and pay the commissioner an amount equal to the

taxes imposed by law on the premiums of authorized insurance companies. If a surplus line policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the portion of the premium which is properly allocable to the risks or exposures located in this state.

26.1-44-07. Actions against insurers issuing insurance - Venue - Service of process - Time for answer. Every insurer making insurance under this chapter is deemed to be doing business in this state as an unlicensed concern and may be sued upon any claim for relief arising under any policy of insurance so issued and delivered by the insurer. The suit must be brought in the district court of the county in which the plaintiff resides. Service of summons and complaint in the suit must be made upon the commissioner in the manner provided by section 26.1-44-04.

26.1-44-08. Civil penalty for failure to file statement and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review. Every such surplus lines insurance broker who fails or refuses to make and file the annual statement, and to pay the taxes required to be paid prior to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of delinquency. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner shall revoke the surplus lines insurance broker's license of the broker if any surplus lines insurance broker fails to make and file the annual statement and pay the taxes, or refuses to allow the commissioner to inspect and examine the broker's records of the business transacted by the broker pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies the affidavit referred to in section 26.1-44-02.

If the license of a surplus lines insurance broker is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines insurance broker until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

26.1-44-09. Rulemaking authority. The commissioner may adopt reasonable rules to implement this chapter.

SECTION 22. REPEAL. Chapters 26-02, 26-03, 26-03.1, 26-03.2, 26-03.3, 26-05, 26-06, 26-09.2, 26-10, 26-10.1, 26-11.1, 26-17.1, 26-18, 26-31, 26-33, 26-34, 26-35, 26-36, 26-39, and 26-41 of the North Dakota Century Code, chapters 26-03.4, 26-03.5, 26-03.6, 26-17.2, and 26-36.1, and sections 26.1-17-13, 26.1-17-14, 26.1-17-15, 26.1-17-17, 26.1-18-15, and 26.1-18-16 of the 1983 Supplement to the North Dakota Century Code, sections 1 and 10 of

chapter 247, sections 1 and 12 of chapter 248, and section 1 of chapter 249 of the 1977 Session Laws, section 1 of chapter 303 of the 1981 Session Laws, and section 27 of chapter 332 of the 1983 Session Laws are hereby repealed.

SECTION 23. TRANSITION - APPLICATION TO EXISTING DOCUMENTS.

Any agreement, application, certificate, complaint, contract, form, license, plan, policy, or schedule approved, delivered, filed, issued, or received under provisions of title 26 as it existed on June 30, 1985, is deemed to have been approved, delivered, filed, issued, or received under the appropriate provisions of title 26.1.

Approved March 27, 1985

CHAPTER 317

SENATE BILL NO. 2079
(Legislative Council)
(Interim Insurance Code Revision Committee)

INSURANCE CODE REVISION — HOUSEKEEPING

AN ACT to create and enact a new subsection to section 15-29-08 and a new subsection to section 58-06-01 of the North Dakota Century Code, relating to fire and tornado insurance coverage by school districts and townships; and to amend and reenact sections 2-02-09, 13-03.1-17, 26.1-02-02, subsections 6, 7, and 9 of section 26.1-02-05, subsection 5 of section 26.1-02-06, subsection 2 of section 26.1-02-23, subsections 1 and 2 of section 26.1-03-12, section 26.1-03-15, subsections 1 and 2 of section 26.1-03-17, subsection 1 of section 26.1-04-04, subsections 1 and 4 of section 26.1-04-05, sections 26.1-04-06, 26.1-05-04, 26.1-05-19, 26.1-05-27, 26.1-05-34, 26.1-07-14, subsection 5 of section 26.1-07-17, subsections 2, 6, and 9 of section 26.1-08-01, subsections 1 and 2 of section 26.1-08-03, subsection 1 of section 26.1-08-05, subsection 1 of section 26.1-08-06, subsection 4 of section 26.1-08-09, subsections 1, 2, and 3 of section 26.1-08-10, subsections 3 and 4 of section 26.1-08-11, subsection 1 of section 26.1-08-12, section 26.1-09-13, subsection 3 of section 26.1-10-01, subsection 9 of section 26.1-11-01, sections 26.1-11-07, 26.1-11-11, subsection 1 of section 26.1-11-12, sections 26.1-11-18, 26.1-11-19, 26.1-12-11, 26.1-12-12, 26.1-12-15, 26.1-13-16, 26.1-13-19, 26.1-14-15, 26.1-17-18, ~~26.1-17-23~~, 26.1-17-25, 26.1-17-26, 26.1-17-27, subsection 11 of section 26.1-18-03, sections 26.1-18-12, 26.1-18-14, subsection 3 of section 26.1-19-04, sections 26.1-19-08, 26.1-19-10, 26.1-22-20, 26.1-23-05, 26.1-23-11, 26.1-24-03, 26.1-24-05, 26.1-24-07, 26.1-25-16, 28-04-02, 31-12-06, 32-12.1-05, 32-12.1-06, subsection 1 of section 32-12.1-15, subsection 1 of section 39-01-08, subsection 7 of section 39-04-05, subsections 2, 3, and 4 of section 39-04-06, subsection 7 of section 39-05-20.3, subsection 2 of section 39-06-05, sections 39-16-05, 39-16-29, subsection 3 of section 39-16.1-04, section 39-16.1-20, subsection 7 of section 41-09-04, subsection 2 of section 43-10.1-01, sections 43-13-31, 49-18-33, subsection 2 of section 51-07-12, sections 54-30-24.1, 60-02-10.1, and 60-02-35.1 of the North Dakota Century Code, relating to

insurance policies, insurance contracts, and accident and health insurance.

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

SECTION 1. AMENDMENT. Section 2-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-02-09. Authorization for airport liability insurance - Exceptions. ~~From and after July 1~~ After June 30, 1967, any airport authority, county, city, township, or other political subdivision which operates an airport, is hereby authorized to carry liability insurance for its own protection and the protection of any employee from claim for loss or damage for bodily injury or property damage arising out of or by reason of its operation and maintenance of airport facilities in connection therewith or landing fields; provided, that any airport authority or political subdivision, and its agents, servants, and employees ~~shall~~ have full government immunity for any claims in excess of the limits afforded by such ~~policy or policies~~ of insurance policies or full governmental immunity in the event no insurance is carried; ~~and further providing that the fact. The~~ existence of insurance coverage ~~shall~~ may not be conveyed to the jury in the event of suits thereon, either directly or indirectly. If a dispute exists concerning the amount or nature of the insurance coverage, the dispute ~~shall~~ must be tried separately before the main trial determining the claims and damages of the claimant. This statute confers no right for a claimant to sue the insurer directly.

SECTION 2. AMENDMENT. Section 13-03.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03.1-17. Insurance - ~~Policies of insurance~~ Insurance policies - Existing insurance.

1. The following types of insurance may be written in connection with loans made by licensees 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 and accident 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 ~~shall~~ must be canceled and a refund of the unearned premium ~~shall~~ must be credited or paid the borrower.
2. Notwithstanding any other provision of this chapter, any gain or advantage in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or its sale ~~shall~~ is not be deemed to be an additional or further charge in connection with the contract of loan.
3. The insurance premium for such insurance may be collected from the borrower or included in the loan contract of loan at the time the loan is made. No insurance premiums or charges, other than for credit life and accident and health and accident 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.
4. If a borrower procures insurance by or through a licensee, the licensee shall deliver to the borrower within fifteen days after the making of the loan an executed copy of the insurance policy or certificate of insurance. A borrower may procure insurance to secure a loan from any agent authorized to do business by the insurance commissioner of insurance. A licensee may require that such insurance be provided, including endorsements thereon, prior to any disbursement of loan proceeds, but charges ~~shall~~ will not accrue on any loan until the loan proceeds are disbursed. Nothing in this chapter ~~shall~~ be so construed as to impair impairs or invalidate invalidates the obligations of any contract of loan contract which was lawfully entered into prior to July 1, 1975.

SECTION 3. A new subsection to section 15-29-08 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To insure the school district's property which is not required to be insured against loss by fire or tornado by the state fire and tornado fund, in a stock or mutual fire insurance company or in the state fire and tornado fund.

SECTION 4. AMENDMENT. Section 26.1-02-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-02-02. **Duty of commissioner before granting or renewing certificate of authority.** The commissioner must be satisfied by examination and evidence that an insurance company is legally qualified to transact business in this state, including compliance with section 26.1-03-11, before granting a certificate of authority to the company to issue policies or make ~~contracts~~ of insurance contracts. A certificate of authority issued under this title remains in force in perpetuity if the required renewal fee is paid and the commissioner is satisfied that the documents required by section 26.1-03-11 have been filed, the statements and evidences of investment required of the company have been furnished, the required capital or surplus or both, securities, and investments remain secure, and all other requirements of law are met.

SECTION 5. AMENDMENT. Subsections 6, 7, and 9 of section 26.1-02-05 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. Transactions involving group life, ~~sickness~~, and accident, and health, or blanket ~~sickness and~~ and health insurance, or group annuities where the master policy of the group was lawfully issued and delivered in and pursuant to the laws of a state in which the insurance company was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.
7. Transactions involving any ~~policy~~ of insurance policy or annuity contract issued before July 1, 1973.
9. Transactions involving ~~contracts~~ of insurance contracts issued to one or more industrial insureds; provided, that this does not relieve an industrial insured from taxation imposed upon independently procured insurance. An industrial insured is an insured:
 - a. Which procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant;
 - b. Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars; and
 - c. Which has at least twenty-five full-time employees.

SECTION 6. AMENDMENT. Subsection 5 of section 26.1-02-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Issuing or delivering a ~~contract~~ of an insurance contract to residents of this state or to persons authorized to do business in this state.

SECTION 7. AMENDMENT. Subsection 2 of section 26.1-02-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The company is practicing discrimination against individual risks in the issue or cancellation of policies, bonds, or other ~~contracts~~ of insurance contracts or corporate suretyship.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 26.1-03-12 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Any ~~policy~~ of insurance policy insuring only the insured's legal obligations arising from product liability or completed operations exposure of the insured.
2. Any other ~~policy~~ of insurance policy in which the premium computation includes a premium charge for product liability or completed operations exposure of the insured.

SECTION 9. AMENDMENT. Section 26.1-03-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-15. Limitation of liability. No liability, and no ~~cause of action~~ claim for relief of any nature, arises against any insurance company or its agents or employees, or the commissioner or the commissioner's employees, for any action taken by them pursuant to sections 26.1-03-13 and 26.1-03-14.

* SECTION 10. AMENDMENT. Subsections 1 and 2 of section 26.1-03-17 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, and finance and service charges received in this state during the preceding calendar quarter, at the rate of two percent with respect to life insurance, one-half of one percent with respect to accident and ~~sickness~~ health insurance, and one percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The tax is payable on or before the sixtieth day after the last day of the calendar

* NOTE: Section 26.1-03-17 was also amended by section 1 of Senate Bill No. 2142, chapter 318.

quarter and shall be deposited in the general fund in the state treasury.

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, 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, and 26.1-03-19 through 26.1-03-22, and a credit against the tax due for 1982, 1983, 1984, and 1985 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 ~~shall~~ must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

SECTION 11. AMENDMENT. Subsection 1 of section 26.1-04-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No person, engaged in selling ~~real or personal~~ property or in the business of financing the purchase of ~~real or personal~~ property or of lending money on the security of ~~real or personal~~ property and no trustee, director, officer, agent, or other employee of the person may require, as a condition precedent, concurrent, or subsequent to the sale or financing the purchase of the property or to lending money upon the security of a mortgage thereon or for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person purchasing the property or for whom the purchase is to be financed or to whom the money is to be loaned or for whom the extension, renewal, or other act is to be granted, or performed, negotiate any ~~policy of~~ insurance policy or renewal thereof covering the property through a particular insurance company, agent, solicitor, or broker.

SECTION 12. AMENDMENT. Subsections 1 and 4 of section 26.1-04-05 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Make any ~~contract of~~ insurance contract, or agreement with reference thereto, other than such as is expressed plainly in the policy issued thereon.

4. Offer, promise, allow, or give any paid employment or contract for services of any kind, or any other valuable inducement or consideration whatever not specified in the insurance policy or contract of insurance.

SECTION 13. AMENDMENT. Section 26.1-04-06 of the 1983 Supplement to 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 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 ~~policy of~~ 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 14. AMENDMENT. Section 26.1-05-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-04. Capital stock and surplus requirements upon organization of domestic stock company - Exceptions. A stock insurance company may not be incorporated under this chapter unless it has an authorized capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. A domestic stock insurance company may not issue any ~~policy of~~ insurance policy until at least fifty percent of the required capital stock, and all of the required surplus, has been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation. The commissioner, for good cause shown, may extend the time of payment of the residue for the further period of one year. If the minimum capital stock and surplus requirements at the time a stock insurance company incorporated under this chapter were less than the minimum requirements provided by this section, the stock insurance company must maintain authorized capital stock and surplus which satisfies the capital stock and surplus requirements in effect at that time.

SECTION 15. AMENDMENT. Section 26.1-05-19 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-19. Authorized investment of funds of insurance companies. A domestic insurance company may invest any of its funds and accumulations in:

1. Securities or obligations made specifically eligible for such investment by law.
2. Bonds or other evidence of indebtedness issued, assumed, or guaranteed by the United States of America, the District of Columbia, or by any state, territory, or insular possession of the United States or by any county, city, township, school district, or other civil division of a state, including those payable from special revenues or earnings specifically pledged for the payment thereof, and those payable from special assessments, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
3. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by any instrumentality or agency of the United States of America, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
4. Notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator, and securities issued by national mortgage associations.
5. Bonds issued by the industrial commission under chapter 4-36.
6. Bonds guaranteed by the economic development commission under chapter 6-09.2.
7. Bonds issued by the North Dakota municipal bond bank pursuant to chapter 6-09.4.
8. Bonds issued by the state board of higher education under chapter 15-55.
9. Revenue bonds issued by the state water commission.
10. Interim financing notes issued by the state water commission pursuant to chapter ~~16-02~~ 61-02.
11. Warrants issued by a city under chapter 40-24.
12. Bonds or notes issued pursuant to chapter 40-33.2.
13. Bonds or other obligations issued pursuant to chapter 40-58.
14. Bonds issued under chapter 40-61.

15. Bonds issued under chapter 54-30.
16. Notes or other evidences of indebtedness of the North Dakota life and health insurance guaranty association not in default.
17. Notes or other interest-bearing obligations of any state development corporation of which the company is a member, issued in accordance with chapter 10-30.
- ~~16-~~ 18. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or any province thereof, or by any municipality or district therein, provided that the obligations are valid and legally authorized and issued.
- ~~17-~~ 19. Mortgage bonds and debentures of any solvent railway company duly incorporated and authorized under the laws of this state or of any other state, ~~territory~~, or insular possession of the United States, or of the Dominion of Canada or of any province thereof.
- ~~18-~~ 20. Mortgage bonds and debentures of any solvent industrial public utility or financial corporation duly incorporated and authorized under the laws of the United States of America or of any state, ~~territory~~, or insular possession thereof, or of the Dominion of Canada or of any province thereof, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
- ~~19-~~ 21. Preferred stock, of, or common or preferred stock guaranteed as to dividends by, and common stock of, any corporation organized under the laws of the United States, any state, ~~territory~~, or possession of the United States, ~~the District of Columbia~~, the Dominion of Canada, or any province of the Dominion of Canada, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes, subject to the following restrictions and limitations:
 - a. The company issuing the preferred stock or guaranteeing the dividends on the common stock must have earned an average amount per annum at least equal to five percent of the par value of its common and preferred stocks or in the case of stocks having no par value, of its issued or stated value outstanding at the date of purchase, over the period of seven fiscal years immediately preceding the date of purchase or which over such period earned an average

annual amount at least equal to two times the total of its annual interest charges, preferred dividends, and dividends guaranteed by it, determined with reference to the date of purchase.

- b. The company issuing any common stock must have earned an average amount per annum at least equal to six percent of the par value of its capital stock, or in the case of stock having no par value of the issued or stated value of such stock, outstanding at the date of purchase over the period of seven fiscal years immediately preceding the date of purchase.
 - c. The company issuing or guaranteeing the stock has not been in arrears in the payment of dividends thereunder for a period of ninety days within the five-year period immediately preceding purchase of the stock.
 - d. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate twenty percent of the life insurance company's admitted assets.
- ~~20-~~ 22. Savings accounts, under certificates of deposit or in any other form, in solvent banks and trust companies which have qualified for federal deposit insurance corporation protection, shares and savings accounts, under certificates of deposit, investment certificates, or in any other form, in solvent savings and loan associations organized under federal law or state law of any state which have qualified for federal savings and loan insurance corporation protection, and shares and deposit accounts, under certificates of deposit or in any other form, in solvent state or federally chartered credit unions which are insured by the national credit union administration. Investments in the shares and accounts are not limited to, or by, the amount of any such insurance protection. Short-term or liquidity investments such as certificates of deposit, repurchase agreements, bankers' acceptances, commercial paper, money market mutual funds, or current interest accounts in solvent banks and trust companies, savings and loan associations, state or federally chartered credit unions, investment brokerage houses which are regulated by a federal agency, and such other types of investments as may be deemed appropriate and authorized by rule by the commissioner.
- ~~21-~~ 23. Loans made upon the security of its own policies, if a life insurance company, but no loan on any policy may exceed the reserve value thereof.
- ~~22-~~ 24. Notes secured by mortgages on improved unencumbered real estate, including leaseholds substantially having and furnishing the rights and protection of a first real estate mortgage, within the United States of America or

any province of the Dominion of Canada. No loan may be made under this subsection unless at the date of acquisition the total indebtedness secured by such lien does not exceed seventy-five percent of the value of the property upon which it is a lien. The loan may be made in an amount exceeding seventy-five percent so long as any amount over seventy-five percent of the value of the property mortgaged is guaranteed or insured by the federal housing administration or guaranteed by the administrator of veterans affairs or is insured by private mortgage insurance through an insurance company authorized to do business in this state. Loans may be amortized on the basis of a final maturity not exceeding thirty years from the date of the loan with an actual maturity date of the loan at any time less than thirty years. A loan on a single-family dwelling where the loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan may be made in an amount not exceeding eighty percent of the value of the property mortgaged. The loan on a single-family dwelling may be made in an amount exceeding eighty percent so long as any amount over eighty percent of the value of the property mortgaged is insured by private mortgage insurance through an insurance company authorized to do business in this state. Buildings may not be included in the valuation of such property unless they are insured and the policies are made payable to the company as its interest may appear. A loan may not be made in excess of the amount of insurance carried on the buildings plus the value of the land. No insurance company may hold less than the entire loan represented by the bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of the bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee which is a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars is required. In case of proper notification of default, the trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of the bondholders under the provisions of the trust indentures. An insurance company may acquire such an interest in real estate directly or as a joint venture or through a limited or general partnership in

which the insurance company is a partner. An insurance company acquiring such an interest in real estate on the basis of a joint venture or through a limited or general partnership may acquire such an interest so long as the company's interest does not exceed seventy-five percent of the value of the property.

- ~~23-~~ 25. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States of America, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection 22 24.
- ~~24-~~ 26. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:
- a. Real estate used primarily for farming or agriculture may not be acquired under this subsection.
 - b. Investments made by any company under this subsection may not at any time exceed ten percent of the admitted assets of the company.
 - c. An investment in any single parcel of real estate acquired under this subsection may not exceed two percent of the admitted assets of the company.
 - d. The real estate, including the cost of improvements, must be valued at cost and the improvements may be depreciated annually at an average rate of not less than two percent of the original cost.
 - e. An insurance company may acquire such real estate or an interest in such real estate directly or as a joint venture or through a limited or general partnership in which the insurance company is a partner.
- ~~25-~~ 27. Land and buildings used as home or regional offices, subject to the following provisions and limitations:
- a. Land and buildings thereon in which it has its principal office and any other real estate including regional offices requisite for its convenient accommodation in the transaction of its business.
 - b. Investments or total commitment in the land and buildings may not aggregate more than ten percent of the company's admitted assets without the consent of the commissioner.
 - c. The real estate, including the cost of improvements, must be valued at cost and the improvements must be

depreciated annually at an average rate of not less than two percent of the original cost.

- 26- 28. Investments by loans or otherwise, in the purchase of electric or mechanical machines, including software, constituting a data processing system. The company may hold the system as an admitted asset for use in connection with the business of the company if, (a) its aggregate cost does not exceed five percent of the admitted assets of the company; and (b) the cost of the components constituting the system is fully amortized over a period of not to exceed seven years. If a data processing system consists of separate components acquired at different times, then the cost of each component must be amortized over a period not to exceed seven years commencing with the date of acquisition of each component.
- 27- 29. Promissory notes amply secured by the pledge of bonds or other evidences of indebtedness in which the company is authorized to invest its funds by the provisions of this section.
- 28- 30. Loans, securities, or investments in addition to those permitted in this section, whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate of such company's investments under this subsection may not exceed either five percent of the company's admitted assets, or the amount equal to the company's unassigned surplus, whichever is less.

The commissioner may adopt rules as to investments which are permissible for any domestic insurance company which may waive or increase any limitation on investments or authorize companies to invest their funds in investments which are not specifically mentioned in statutes relating to investments if he the commissioner finds, after notice and hearing, that such funds would be well invested and available for the payment of losses. The commissioner, in adopting such rules, ~~shall~~ may not be any more restrictive, or place any greater limitations on, any type of investment in which companies are authorized by statute to invest their funds.

This section does not prohibit a company from taking any action deemed necessary or expedient for the protection of investments made by it or from accepting in good faith, to protect its interests, securities, or property not mentioned in this section in payment or to secure debts due to it.

SECTION 16. AMENDMENT. Section 26.1-05-27 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-27. **Certificate of compliance with security deposit law - Issuance - Renewal - Attachment to policies.** The commissioner shall issue a certificate to a domestic life insurance company to the effect that the company does business under the compulsory reserve deposit law of North Dakota and maintains in the office of the commissioner a deposit of an amount in excess of the net value of all outstanding policies in stipulated and first-class securities deposited for the protection of the policyholders of the company when the company has:

1. Filed its annual statement; and
2. Deposited securities with the commissioner or filed a detailed list of securities held by the company in lieu of the deposit with the commissioner, the deposit and list to be renewed annually on or before March first.

The certificate expires on March thirty-first of the ensuing year and may be renewed annually upon the filing of a statement of renewal along with any additional physical deposit or additions to the statement of securities held by the company in lieu of a deposit and upon compliance with the other provisions of this section. A copy of the certificate may be attached to any ~~policy~~ policy of insurance issued by any domestic life insurance company after the certificate has been issued to it.

SECTION 17. AMENDMENT. Section 26.1-05-34 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-34. **Reciprocal states - Restrictions on domestic companies - Exceptions.** As used in this section, "reciprocal state" means a state the laws of which prohibit an insurance company domiciled therein from insuring the lives or persons of residents of, or property or operations located in, the state of North Dakota unless it holds a valid and subsisting certificate of authority issued by the commissioner of insurance of this state. The prohibition may be subject to the exceptions to this section.

A domestic insurance company may not enter into a ~~contract~~ contract upon the life or person of a resident of, or property or operations located in, a reciprocal state unless it is authorized pursuant to the laws of that state to transact such insurance therein. The commissioner shall annually mail notice to every domestic insurance company, specifying the reciprocal states.

The exceptions to this section are:

1. Contracts entered into where the prospective insured is personally present in the state in which the insurance company is authorized to transact insurance when the insured signs the application.
2. The issuance of certificates under a lawfully transacted group life or group disability policy, where the master

policy was entered into a state in which the insurance company was then authorized to transact insurance.

3. The removal or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of this section.

SECTION 18. AMENDMENT. Section 26.1-07-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-07-14. Court may order liquidation of company - Commissioner to direct liquidation - Procedure. If, after the institution of proceedings under sections 26.1-07-08 through 26.1-07-20 and after a full hearing on the order to show cause issued in connection therewith, the court orders a liquidation of the business of the company, the commissioner shall make and direct the liquidation. The commissioner may deal with the property and business of the company in the commissioner's own name as commissioner or in the name of the company, as the court may direct, and is vested by operation of law with title to all the property, contracts, and ~~rights of action~~ claims for relief of the company as of the date of the order directing liquidation. The filing or recording of the order in the office of a register of deeds imparts the same notice that the proper filing or recording of a deed, bill of sale, or other evidence of title by the company would impart. The order of liquidation, unless otherwise directed by the court, must provide that the dissolution of the company takes effect upon the entry of the order in the office of the clerk of the district court of the county wherein the company had its principal office for the transaction of business.

SECTION 19. AMENDMENT. Subsection 5 of section 26.1-07-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Claims presented by the North Dakota insurance guaranty association and any similar organization in another state, which represent covered claims defined in section ~~26-36-05~~ 26.1-42-02.

SECTION 20. AMENDMENT. Subsections 2, 6, and 9 of section 26.1-08-01 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Association plan" means a ~~policy of insurance~~ policy coverage offered by the association through the lead carrier.
6. "Insurance company" means a company operating pursuant to chapter ~~26-03-1~~ 26.1-17 or 26.1-36, and offering or selling ~~policies or contracts of~~ accident and sickness health insurance policies or contracts. Insurance company does not include a health maintenance organization.

- 9. "Policy" means insurance or nonprofit health service plan contracts providing benefits for hospital, surgical, and medical care. Policy does not include coverage which is (a) limited to disability or income protection coverage, (b) automobile medical payment coverage, (c) supplemental to liability insurance, (d) designed solely to provide payment on a per diem basis, daily indemnity, or non-expense-incurred basis, or (e) credit accident and sickness health insurance.

SECTION 21. AMENDMENT. Subsections 1 and 2 of section 26.1-08-03 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- 1. There is established a comprehensive health association with participating membership consisting of those insurance companies, licensed or authorized to do business in this state, with an annual premium volume of accident and sickness health insurance contracts, derived from or on behalf of residents in the previous calendar year, of at least one hundred thousand dollars, as determined by the commissioner.
- 2. The board of directors of the association must consist of ten individuals, one from each of the ten participating member insurance companies of the association with the highest annual premium volumes of accident and sickness health insurance contracts as determined in subsection 1. Each board member is entitled to votes, in person or by proxy, based on the member's annual premium volume of accident and sickness health insurance contracts as determined in subsection 1, in accordance with the following schedule:

\$ 100,000	-	4,999,999	1 vote
\$ 5,000,000	-	9,999,999	2 votes
\$10,000,000	-	14,999,999	3 votes
\$15,000,000	or more		4 votes

Members of the board may be reimbursed from the moneys of the association for expenses incurred by them due to their service as board members, but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with subsection 4 of section 26.1-08-09.

SECTION 22. AMENDMENT. Subsection 1 of section 26.1-08-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 1. A plan of health coverage is a number three qualified plan A if it otherwise meets the requirements established by

chapter ~~26-03-1~~ 26.1-36, and other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

- a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which does not exceed one hundred fifty dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.
- b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:
 - (1) Hospital services.
 - (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.
 - (3) Use of radium or other radioactive materials.
 - (4) Oxygen.
 - (5) Anesthetics.
 - (6) Diagnostic x-rays and laboratory tests.
 - (7) Services of a physical therapist.
 - (8) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
- c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
- d. Covered expenses for the services or articles specified in this subsection do not include:
 - (1) Drugs requiring a physician's prescription.
 - (2) Services of a nursing home.

- (3) Services of a home health agency.
- (4) Home and office calls.
- (5) Prostheses.
- (6) Rental or purchase of durable medical equipment.
- (7) The first twenty dollars of diagnostic x-ray and laboratory charges in each fourteen-day period.
- (8) Oral surgery.
- (9) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent to self-insurance, or for which benefits are payable under another ~~policy~~ policy of accident and ~~sickness~~ health insurance policy or medicare.
- (10) Any charge for treatment for cosmetic purposes other than for surgery for the repair of an injury or birth defect.
- (11) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
- (12) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.
- (13) That part of a charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.
- (14) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.
- (15) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

- (16) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.

SECTION 23. AMENDMENT. Subsection 1 of section 26.1-08-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A plan of health coverage is a number three qualified plan B if it otherwise meets the requirements established by chapter ~~26-03-1~~ 26.1-36, and the other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:
 - a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which does not exceed one hundred fifty dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.
 - b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:
 - (1) Hospital services.
 - (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.
 - (3) Drugs requiring a physician's prescription.
 - (4) Services of a nursing home for not more than one hundred twenty days in a year if the services commence within fourteen days following confinement of at least three days in a hospital for the same condition.
 - (5) Service of a home health agency up to a maximum of one hundred eighty visits per year.
 - (6) Use of radium or other radioactive materials.
 - (7) Oxygen.
 - (8) Anesthetics.

- (9) Prostheses.
 - (10) Rental or purchase, as appropriate, of durable medical equipment.
 - (11) Diagnostic x-rays and laboratory tests.
 - (12) Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.
 - (13) Services of a physical therapist.
 - (14) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
- c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
- d. Covered expenses for the services or articles specified in this subsection do not include:
- (1) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance, or for which benefits are payable under another ~~policy~~ policy of accident and ~~sickness~~ health insurance policy or medicare.
 - (2) Any charge for treatment for cosmetic purposes other than surgery for the repair of an injury or birth defect.
 - (3) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
 - (4) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room,

unless the private room is prescribed as medically necessary by a physician.

- (5) That part of any charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.
- (6) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.
- (7) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.
- (8) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.

SECTION 24. AMENDMENT. Subsection 4 of section 26.1-08-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Each participating member of the association which is liable for state income tax or state premium tax must share the losses due to claims expenses and meeting expenses under subsection 2 of section 26.1-08-03 of the association plan. The difference between the total claims expense of the association plan and the premium payments allocated to the payment of benefits is the liability of those association members that are liable for state income tax or state premium tax. Such association members must share in the excess costs of the association plan in an amount equal to the ratio of a member's total annual premium volume for accident and sickness health insurance charges, received from or on behalf of state residents, to the total accident and sickness health insurance premium contract charges received by association members that are liable for state income taxes or state premium taxes from or on behalf of state residents, as determined by the commissioner. Each member's liability may be determined retroactively and payment of the assessment is due within thirty days after notice of the assessment is given. Failure by a member to tender to the association the full amount assessed within thirty days of notification by the association is grounds for termination of membership.

SECTION 25. AMENDMENT. Subsections 1, 2, and 3 of section 26.1-08-10 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Any participating member of the association ~~may~~ shall submit to the commissioner the policies which are being proposed to serve as the association plan. The commissioner shall prescribe by rule the time and manner of the submission.
2. ~~Upon the commissioner's approval of the policy forms and contracts submitted, the~~ The association must select policies and contracts by a member or members of the association to be the association plan. The association must select one lead carrier to issue the qualified plans. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board.
3. The lead carrier shall perform all administrative and claims payment functions required by this section ~~upon the commissioner's approval of the policy forms and contracts submitted.~~ The lead carrier shall provide these services for a period of at least three years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within ninety days of its receipt. A failure to make a final decision on a request to terminate within the specified period is deemed an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, six months prior to the expiration of each three-year period. The association shall follow subsection 2 in selecting a lead carrier for the subsequent three-year period, or if a request to terminate is approved on or before the end of the three-year period.

SECTION 26. AMENDMENT. Subsections 3 and 4 of section 26.1-08-11 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. All licensed accident and ~~sickness~~ health insurance agents may engage in the selling or marketing of qualified association plans. The lead carrier shall pay an agent's referral fee of twenty-five dollars to each licensed accident and ~~sickness~~ health insurance agent who refers an applicant to the association plan, if the applicant is accepted. The referral fees must be paid to the lead carrier from moneys received as premiums for the association plan.
4. Every insurance company which rejects or applies underwriting restrictions to an applicant for accident and ~~sickness~~ health insurance must notify the applicant of the

existence of the association plan, requirements for being accepted in it, and the procedure for applying to it.

* SECTION 27. AMENDMENT. Subsection 1 of section 26.1-08-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The association plan must be open for enrollment by eligible persons. A person is eligible and may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:
 - a. The name, address, and age of the applicant, and length of applicant's residence in this state.
 - b. The name, address, and age of spouse and children, if any, if they are to be insured.
 - c. Written evidence that the applicant has been rejected for accident and ~~sickness~~ health insurance, or that restrictive riders or a preexisting conditions limitation, the effect of which is to reduce substantially coverage from that received by a person considered a standard risk, was required, by at least two insurance companies within six months of the date of the certificate.
 - d. A designation of coverage desired.

SECTION 28. AMENDMENT. Section 26.1-09-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-09-13. Solicitation without certificate of authority - Limitation. For the purpose of organization, and upon the issuance of a permit by the commissioner, powers of attorney may be solicited without a license or certificate of authority, but an attorney, agent, or other person may not effect any ~~contract of~~ insurance contract under this chapter until compliance with this chapter.

SECTION 29. AMENDMENT. Subsection 3 of section 26.1-10-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Insurance company" means an insurer as described in section ~~26-02-02~~ 26.1-29-02, except that it does not include:
 - a. Agencies, authorities, or instrumentalities of the United States, and its possessions ~~and territories~~, the Commonwealth of Puerto Rico, ~~the District of Columbia~~, or a state or political subdivision of a state.

* NOTE: Section 26.1-08-12 was also amended by section 2 of Senate Bill No. 2468, chapter 322.

- b. Fraternal benefit societies.
- c. Nonprofit medieal and hospital health service asseeiations corporations.

SECTION 30. AMENDMENT. Subsection 9 of section 26.1-11-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 9. Agreed to appoint, and will appoint, as its agents in this state only residents of this state except as otherwise provided in chapter ~~26-17-1~~ 26.1-26.

SECTION 31. AMENDMENT. Section 26.1-11-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-11-07. Countersignature requirement - Commissions - Reciprocity. Notwithstanding any other provision of this title or policy forms to the contrary, there may not be any requirement that an agent resident in this state sign or countersign a ~~policy of an~~ insurance policy covering a subject of insurance resident, located, or to be performed in this state. However, if the laws or rules of another state require a signature or countersignature by an agent resident in that state on a ~~policy of an~~ insurance policy written by a nonresident agent or nonresident broker of that state, then any ~~policy of~~ insurance policy written by an agent resident of that state licensed as a nonresident agent in this state covering a subject of insurance resident, located, or to be performed in this state must be signed or countersigned in writing by an agent resident in this state. A ~~policy of An~~ insurance policy may not be deemed invalid because of the absence of the required signature or countersignature. If the laws or rules of another state require an agent resident in that state to retain a portion of the commission paid on a like ~~policy of~~ insurance policy written, countersigned, or delivered by the agent in that state at the request of a nonresident agent or nonresident broker of that state, then the agent resident in this state who signed or countersigned a ~~policy of an~~ insurance policy written by a resident of that state licensed as a nonresident agent in this state covering a subject of insurance resident, located, or to be performed in this state shall retain an equal pro rata portion of any commission on the insurance ~~policy of insurance~~.

SECTION 32. AMENDMENT. Section 26.1-11-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-11-11. Consent to service of process - Unauthorized insurance company. Any of the following acts in this state, effected by mail or otherwise, by any unauthorized foreign or alien insurance company is equivalent to and constitutes an appointment by the company of 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 insured or beneficiary arising out of any ~~contract of~~

insurance contract, and any such act signifies its agreement that the service of process is of the same legal force and validity as personal service in this state, upon such insurer:

1. The issuance or delivery of ~~contracts~~ contracts of insurance to residents of this state or to corporations authorized to do business in this state.
2. The solicitation of applications for such contracts.
3. The collection of premiums, membership fees, assessments, or other considerations for such contracts.
4. Any other transaction of insurance business.

SECTION 33. AMENDMENT. Subsection 1 of section 26.1-11-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Service in any action, suit, or proceeding is, in addition to the manner provided in section 26.1-01-04, valid if served upon any person within this state who on behalf of the insurance company is:
 - a. Soliciting insurance;
 - b. Making, issuing, or delivering any ~~contract~~ insurance contract; or
 - c. Collecting or receiving any premium membership fee, assessment, or other consideration for insurance.

SECTION 34. AMENDMENT. Section 26.1-11-18 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-11-18. Attorney's fees. In any action against an unauthorized foreign or alien insurance company upon a ~~contract~~ an insurance contract issued or delivered in this state to a resident of this state or to a corporation authorized to do business in this state, if the insurance company has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include the fee in any judgment that may be rendered in the action. The fee may not exceed twelve and one-half percent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurance company, but the fee awarded may not be less than twenty-five dollars. Failure of an insurance company to defend any action is prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

SECTION 35. AMENDMENT. Section 26.1-11-19 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-11-19. Application. This chapter does not apply to any action, suit, or proceeding against any unauthorized foreign or alien insurance company arising out of any ~~contract~~ of reinsurance, ocean marine, aircraft, or railway insurance contract, insurance against legal liability arising out of the ownership, operation or maintenance of any property having a permanent situs outside this state, or insurance against loss of or damage to any property having a permanent situs outside this state, where the ~~contract~~ of insurance contract designates the commissioner or a bona fide resident of this state the attorney of the unauthorized insurance company upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of the contract or where the insurance company enters a general appearance in the suit, action, or proceeding.

SECTION 36. AMENDMENT. Section 26.1-12-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-12-11. Authority to insure or reinsure - Kinds of insurance open to mutual company. Any mutual insurance company organized under this chapter may make ~~contracts~~ of insurance contracts, and may reinsure or accept reinsurance on any portion thereof, to the extent specified in its articles of incorporation, for the following kinds of insurance:

1. Fire, hail, lightning, tornado, and other insurance. Against loss or damage to property, and the loss of use and occupancy thereof, by fire, lightning, hail, tempest, flood, earthquake, frost or snow, explosion with fire ensuing, and explosion with no fire ensuing, except explosion by steam boilers or flywheels; against loss or damage by water caused by the breakage or leakage of sprinklers, pumps or other apparatus, water pipes, plumbing, or their fixtures, erected for extinguishing fires, and against accidental injury to the sprinklers, pumps or other apparatus, water pipes, plumbing, or fixtures; against the risks of inland transportation and navigation; upon automobiles, whether stationary or operated under their own power, against loss or damage by any of the causes or risks specified in this subsection, including also transportation, collision, liability for damage to property resulting from owning, maintaining, or using automobiles, and including burglary and theft, but not including loss or damage by reason of bodily injury to the person.
2. Liability insurance. Against loss, expense, or liability by reason of bodily injury or death by accident,

- disability, sickness, or disease suffered by others for which the insured may be liable or may have assumed liability.
3. Disability insurance. Against bodily injury or death by accident and disability by sickness.
 4. Automobile insurance. Against any or all loss, expense, and liability resulting from the ownership, maintenance, or use of any automobile or other vehicle. A policy may not be issued under this subsection against the hazard of fire alone.
 5. Steam boiler insurance. Against loss or liability to persons or property resulting from explosions or accidents to boilers, containers, pipes, engines, flywheels, and elevators and machinery used in connection therewith, and against loss of use and occupancy caused thereby. If the company issues insurance under this subsection, it may make inspections and issue certificates of inspection.
 6. Use and occupancy insurance. Against loss from interruption of trade or business which may be the result of any accident or casualty.
 7. Miscellaneous insurance. Against loss or damage by any hazard upon any risk not provided for in this section which is not prohibited by statute or at common law from being the subject of insurance, except life insurance.
 8. Legal expense insurance.

SECTION 37. AMENDMENT. Section 26.1-12-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-12-12. Compliance with general insurance laws - Provisions or conditions in policy. A mutual insurance company organized under this chapter must comply with the provisions of any law applicable to a stock insurance company effecting the same kind of insurance. A company may insert in any form of policy prescribed by the law of this state any provisions or conditions required by its plan of insurance which are not inconsistent or in conflict with the law of this state. The policy may conform to the language and form prescribed by the law, if the policy includes a provision or endorsement reciting that the policy is to be construed as if it were in the language and form prescribed by the law and if a copy of the policy and endorsement, if any, first have been filed with, and not disapproved by, the commissioner.

SECTION 38. AMENDMENT. Section 26.1-12-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-12-15. Corporations, associations, boards, and estates may become member of mutual company - Rights and liabilities. Any public or private corporation, board, or association in this state or elsewhere may make applications and enter into agreements for, and hold, policies in any mutual insurance company organized under this chapter. Any officer, stockholder, trustee, or legal representative of the corporation, board, association, or the representative of an estate may be recognized as acting for or on its behalf for the purpose of the membership but is not liable personally upon the ~~contract~~ of insurance contract by reason of acting in the representative capacity. The right of any corporation organized under the laws of this state to participate as a member of any mutual insurance company is declared to be incidental to the purpose for which the corporation is organized and granted as fully as the rights and powers expressly conferred upon it.

SECTION 39. AMENDMENT. Section 26.1-13-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-13-16. Liability insurance contracts - Limitations. Any county mutual insurance company may make ~~contracts of~~ insurance contracts against loss, expense, or liability by reason of bodily injury or death by accident, disability, sickness, or disease suffered by others for which the insured may be liable or may have assumed liability, except no liability insurance contracts against any or all loss or expense resulting from the ownership, maintenance, or use of any motor vehicle normally operated, intended to be operated, or designed for use, upon any highway, road, or street in this state, may be made.

SECTION 40. AMENDMENT. Section 26.1-13-19 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-13-19. Reinsurance of excessive losses. Except as otherwise provided in sections 26.1-02-20 and 26.1-02-22, any county mutual insurance company may reinsure in a single contract, with other county mutual insurance companies, against excessive losses on all ~~contracts of~~ insurance contracts written. The reinsurance contracts may provide:

1. That whenever the total losses per dollar of insurance in force of any county mutual insurance company joining the contract exceeds the average total losses per dollar of insurance in force of all county mutual insurance companies joining the contract, the excessive loss or a portion thereof must be paid to the county mutual insurance company or companies suffering the excessive loss by the companies having a lower than average loss ratio; and
2. That the payments by individual companies suffering a lower than average loss ratio must be prorated according

to a formula based upon the total dollars of insurance in force of any participating company as compared to the total dollars of insurance in force of all participating companies suffering a lower than average loss ratio.

The payments by any single company may not be greater than that sum which would bring the loss ratio per dollar of insurance in force of the company up to the average loss per dollar of insurance in force of all participating companies.

SECTION 41. AMENDMENT. Section 26.1-14-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-14-15. Optional membership in insurance guaranty association. The company may not be a member insurer under chapter ~~26-36~~ 26.1-42 unless the board of directors by appropriate resolution, certified to and filed with the commissioner on or before December thirty-first following the issuance of its certificate of authority, elects to become a member. If there is an affirmative election, the company becomes a member of the insurance guaranty association effective July first of the following year. The election is irrevocable. In absence of a timely election, no policyholder, claimant, or creditor of the company may receive any payment by the insurance guaranty association.

SECTION 42. AMENDMENT. Section 26.1-17-18 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-17-18. Health service corporation contracts - Approval by commissioner. ~~Contracts between a health service corporation and health service providers and contracts between a health service corporation and subscribers for health service at all times are subject to the approval of the commissioner. Contracts between health service corporations and subscribers for health service are subject to the applicable provisions of chapter 26.1-36 and are subject to the filing and approval requirements of chapter 26.1-30.~~

SECTION 43. AMENDMENT. Section 26.1-17-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 ~~26-17-1~~ 26.1-26. The commissioner shall prescribe the form for the license or certificate. The fee for a license or certificate is three dollars.

Sales representatives licensed to sell hospital service contracts may also sell all other health service contracts without further licensure.

SECTION 44. AMENDMENT. Section 26.1-17-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-17-25. Rates, rating formulas, and rating systems subject to approval of commissioner Rate requirements. Rates charged subscribers, and rating formulas and rating systems used to determine rates, are at all times subject to the approval of the commissioner in the manner prescribed by this chapter. Rates must cover reasonably anticipated claims, cover reasonable costs of operation and overhead expenses, and maintain contingency reserves at a proper level of not less than the sum of incurred claims and operating and overhead expenses for at least two months, but not more than four months. Rates may not be excessive, inadequate, or unfairly discriminatory.

SECTION 45. AMENDMENT. Section 26.1-17-26 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-17-26. Rate Procedure for submitting rate filings.

1. Each health service corporation must file with the commissioner every manual of classifications, rates, rating formulas, rating systems, and rules applicable thereto, and any modification of the foregoing which it proposes to use. Each filing must state the proposed effective date thereof and must indicate the character and extent of the coverage contemplated. Where a filing is not accompanied by supporting information, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, the commissioner shall require the corporation to furnish supporting information, and the waiting period will commence on the date the information is furnished. The information furnished in support of a filing must include (a) contract of benefits; (b) current rate structure; (c) claims experience for most recent period up to three years; (d) claims experience projection for next eighteen months; (e) letter of opinion from the corporation actuary; and (f) judgment of the corporation and its interpretation of the supporting data.

A filing and any supporting information is open to public inspection after the filing becomes effective.

2. The commissioner shall review the filings as seen as reasonably possible after they have been made and within the waiting period and the extension thereof, if any, in order pursuant to sections 26.1-30-19 through 26.1-30-21 to determine whether they meet the requirements of this chapter.

- 3- Each filing shall be on file for a waiting period of thirty days before it becomes effective. The commissioner may extend the waiting period for an additional period not to exceed fifteen days if the commissioner gives written notice within the original waiting period to the filing health service corporation that the commissioner needs additional time to consider the filing.

Upon written application by the corporation, 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 shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

- 4- 3. Under the rules the commissioner has adopted, the commissioner may, by written order, suspend or modify the requirements of filing as to any kind of contract for health services, subdivision thereof, or combination thereof, or as to any class of risks, the rates for which cannot practically be filed before they are used. The orders and rules must be made known to the health service corporation affected. The commissioner may make an examination as the commissioner deems advisable to ascertain whether any rates affected by an order meet the standards set forth in section 26.1-17-25.

SECTION 46. AMENDMENT. Section 26.1-17-27 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-17-27. Disapproval of rate filings.

1. If within the waiting period or any extension thereof, as provided in subsection 3 of section 26.1-17-26, the commissioner finds that a rate filing does not meet the requirements of this chapter, the commissioner shall send to the health service corporation which made the filing written notice of disapproval of the filing, specifying in what respects the commissioner finds the filing fails to meet the requirements of this chapter and stating that the filing may not become effective disapprove the rate filing pursuant to section 26.1-30-21.
2. If at any time subsequent to the applicable waiting period or extension thereof the commissioner finds that a rate filing does not meet the requirements of this chapter, the commissioner shall, pursuant to section 26.1-30-21, issue an order to that effect after a hearing held upon not less than ten days' written notice specifying the matters to be considered at the hearing to every health service corporation which made the filing, issue an order specifying in what respects the commissioner finds that

the filings fail to meet the requirements of this chapter, and stating the date, within a reasonable period thereafter, as of which the filings are deemed to be no longer effective. Copies of the order must be sent to the corporation.

3. Any person or organization aggrieved with respect to any filing which is in effect, except the health service corporation which made the filing, may make written application to the commissioner for a hearing thereon. The application must specify the grounds 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 applicant's grounds were established, and that the grounds otherwise justify holding 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 each corporation which made the filing. If after a hearing the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying the findings and stating the date, within a reasonable period thereafter, as of which the filing is deemed to be no longer effective pursuant to section 26.1-30-21. Copies of this order must be sent to the applicant and to each corporation.
4. A manual of classifications, rules, rating plans, rating formulas, or modifications of any of the foregoing which establish standards for measuring variations in hazards or expense provisions, or both, and which has been filed pursuant to the requirements of section 26.1-17-26, may not be disapproved if the rates thereby produced meet the requirements of this chapter.

SECTION 47. AMENDMENT. Subsection 11 of section 26.1-18-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. A power of attorney duly executed by the applicant, if not domiciled in this state, appointing the commissioner and the commissioner's successors in office, and duly authorized deputies, as the true and lawful attorney of the applicant in and for this state upon whom all lawful process may be served in any legal action or proceeding against the health maintenance organization on a cause of action claim for relief arising in this state.

SECTION 48. AMENDMENT. Section 26.1-18-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-18-12. Evidence of coverage -- Filing of forms and amendments - Contents - Exception.

1. Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation must issue the evidence of coverage. Otherwise, the health maintenance organization must issue the evidence of coverage.

An evidence of coverage, or amendment thereto, may not be issued or delivered to any person in this state until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

2. An evidence of coverage must may not contain-

- 1- No any provision or statement which is unjust, unfair, inequitable, or which encourages misrepresentation, or which is untrue, misleading, or deceptive as defined in section 26.1-18-24.

3. An evidence of coverage must contain a

- 2- A clear and complete statement, if a contract, or a reasonably complete summary, if a certificate, of:

- a. The health care services and the insurance or other benefits, if any, to which the enrollee is entitled under the health care plan.
- b. Any limitations on the services, kinds of services, benefits, or kinds of benefits, to be provided, including any deductible or copayment feature.
- c. Where and in what manner information is available as to how services may be obtained.
- d. The total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to an individual contract, and an indication whether the plan is contributory or noncontributory with respect to group contracts.
- e. A clear and understandable description of the health maintenance organization's method of resolving enrollee complaints.

4. Any subsequent change may be evidenced in a separate document issued to the enrollee.

A copy of the form of evidence of coverage to be used in this state, and any amendment thereto, is subject to the filing and approval requirements of this section unless it is subject to the

jurisdiction of the commissioner under the laws governing health insurance companies or health service corporations in which event the filing and approval provisions of these laws apply. To the extent, however, that these provisions do not apply, the requirements in this section are applicable.

SECTION 49. AMENDMENT. Section 26.1-18-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-18-14. Filing and approval of schedule Schedule of charges. A schedule of charges for enrollee coverage for health care services, or amendment thereto, may not be used in conjunction with any health care plan until a copy of the schedule, or amendment thereto, has been filed with and approved by the commissioner.

The charges for enrollee coverage for health care services must be established in accordance with actuarial principles for various categories of enrollees; provided, that charges applicable to an enrollee may not be individually determined and based on the status of the enrollee's health or physical disability. The charges may not be excessive, inadequate, or unfairly discriminatory. A certification, by a qualified actuary, to the appropriateness of the charges, based on reasonable assumptions, must accompany the filing with the commissioner along with adequate supporting information. For this purpose, a qualified actuary means a member of the American academy of actuaries or any other actuary who may be approved for this purpose by the commissioner.

SECTION 50. AMENDMENT. Subsection 3 of section 26.1-19-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The application for a certificate of authority must be made in a form prescribed by the commissioner and be verified by an officer or authorized representative of the applicant and must set forth or be accompanied by:
 - a. A copy of the basic organizational documents of the applicant, if any, including articles of incorporation, partnership agreements, trust agreements, or other applicable documents.
 - b. A copy of the bylaws, regulations, or similar documents, if any, regulating the conduct of the internal affairs of the applicant.
 - c. A list of the names, addresses, and official capacities within the organization of all persons who are responsible for the conduct of the affairs of the applicant, including all members of the governing body, the officers and directors in the case of a corporation, the partners under a partnership, the

trustees under a trust agreement, and the members or owners under any other organizational form.

- d. A statement generally describing the organization, its enrollment process, its administrative operations, any cost and quality control assurance mechanisms, its internal grievance procedure, the method it proposes to use to enroll members, the geographic area or areas to be served, the location of its office or offices, the number of providers to be utilized, and the recordkeeping system which will provide documentation of the utilization of plan benefits by enrolled participants.
- e. A power of attorney duly executed by the applicant, if not domiciled in the state, appointing the commissioner and the commissioner's successors in office and duly authorized deputies as the true and lawful attorneys of the applicant in and for this state upon whom all lawful process may be served in any legal action or proceeding against the organization on a cause of action claim for relief arising in this state.
- f. Copies of all contract forms the organization proposes to furnish to enrolled participants.
- g. Copies of all contract forms the organization proposes to enter into with providers.
- h. Copies of the forms evidencing coverage to be issued to enrolled participants.
- i. Copies of the forms of group contracts, if any, which are to be issued to employers, unions, trustees, or other organizations.
- j. A statement of the financial condition of the organization, including income statement, balance sheet, and sources of funds.
- k. A description of the proposed marketing techniques and copies of any proposed advertising materials.
- l. A schedule of rates with any available actuarial and other data.
- m. Any other information the commissioner requires to make the determinations required under section 26.1-19-06.

SECTION 51. AMENDMENT. Section 26.1-19-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-19-08. Contract forms.

1. All contracts or other documents evidencing coverage issued by the prepaid legal services organization to participants and marketing documents purporting to describe the organization's prepaid legal services plan must contain:
 - a. A complete description of the legal services to which the participant is entitled.
 - b. The predetermined periodic rate of payment for legal services, if any, which the participant is obligated to pay.
 - c. All exclusions and limitations on services to be provided including any deductible or copayment feature and all restrictions relating to preexisting conditions.
 - d. All criteria by which a participant may be disenrolled or denied reenrollment.
2. A contract between a legal services organization authorized to do business under this chapter and any provider or any participant may not contain any provisions which require participants to guaranty payment, other than copayments and deductibles, to the provider in the event of nonpayment by the legal services organization for any covered services which have been performed under contracts between the participant and the legal services organization.
- 3- A contract form or amendment may not be issued unless it is approved by the commissioner. The contract form or amendment is deemed approved thirty-one days after its filing with the commissioner unless the commissioner finds during this period that the contract form or amendment does not comply with the requirements of section 26-1-19-06 or subsection 1 of this section.

SECTION 52. AMENDMENT. Section 26.1-19-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 26-17-1 26.1-26. The license ~~or certification~~ for the sales representatives must be issued on a form prescribed by the commissioner, and the fee ~~therefor~~ for a license is three dollars.

SECTION 53. AMENDMENT. Section 26.1-22-20 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-20. Replacement of policies. A An insurance policy of insurance in force on August 1, 1943, on property not ~~heretofore~~ required by law to be insured by the fund, may not be canceled by the commissioner, but all such risks, when the policy ~~covering the same~~ lapses, expires, or otherwise is canceled, shall must be insured in accordance with this chapter. The amount of the insurance carried by the fund shall must be increased or decreased from time to time so as to maintain at all times on the insured property the amount of insurance required by this chapter. All reinsurance policies taken or held by the fund shall must be canceled as of August 1, 1943, and all returned premiums ~~thereon~~ shall must be added to the reserve fund.

SECTION 54. AMENDMENT. Section 26.1-23-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-23-05. Recovery from fund when liability cannot be determined. When bodily injury to, or the death of, any person who is a resident of this state is occasioned by or arises out of an accident caused by the operation, maintenance, or use of a motor vehicle in this state and the identity of the person against whom an action might be brought for the recovery of damages for the bodily injury or death resulting from the accident cannot be ascertained, any person who would be entitled to bring the action to recover damages may bring an action in the district court of the county in which the accident occurred within six months from the date of the accident against the unsatisfied judgment fund, by service upon the commissioner and the attorney general, for the recovery of the damages from the fund, provided notice of the accident was given to some police officer immediately after the accident occurred and the name of the officer is alleged in the complaint. A payment may not be made from the fund in satisfaction of any judgment obtained in the action in excess of five thousand dollars, exclusive of costs, for bodily injury to, or the death of, any one person, nor in excess of ten thousand dollars for any one accident.

This section does not limit the liabilities or remedies of any person on the ~~cause of action~~, claim for relief growing out of the accident for which suit was brought against the fund, but the fund is subrogated to the rights of any person who has obtained judgment under this section, to the extent that the fund has made payment in satisfaction thereof.

SECTION 55. AMENDMENT. Section 26.1-23-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-23-11. Order of payment from fund - Prorate distribution. If, at the time of the filing of the order, there is not sufficient moneys

in the unsatisfied judgment fund to satisfy the order, the order shall be registered by the state treasurer and shall be paid when the moneys are available in the fund and subsequent orders shall be paid in the order of registration. If more than two judgments are obtained against a judgment debtor upon ~~causes of action~~ claims for relief arising out of one accident and the aggregate amount due, after crediting any collections, exceeds twenty thousand dollars, the court in making its order shall direct that the state treasurer shall prorate the distribution from the fund in the proportion which each judgment or the balance unpaid thereon bears to the sum of twenty thousand dollars.

SECTION 56. AMENDMENT. Section 26.1-24-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-24-03. When insured entitled to return of premium. A person insured is entitled to a return of premium, including all policy fees in excess of two dollars, on any one policy, and all other sums of money paid in consideration of the ~~policy of insurance~~ policy, as follows:

1. To the whole premium, fee, or other sums if no part of the insured's interest in the thing insured is exposed to any of the perils insured against.
2. To the whole of the premium when the contract is voidable on account of the fraud or misrepresentation of the insurer or on account of facts of the existence of which the insured was ignorant without the insured's fault, or when by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.
3. Except as provided for in a policy form filed with and approved by the commissioner, when insurance other than life is made for a definite period of time and the insured surrenders the policy, to such proportion of the premium, fee, or other sum as corresponds with the unexpired time upon the amount of the policy remaining after deducting therefrom any claim for loss or damage under the policy which has accrued previously.

SECTION 57. AMENDMENT. Section 26.1-24-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-24-05. Surrender of fire insurance policy for cancellation - Return of premium - Short-term rates. The holder of any ~~policy of insurance~~ policy against loss or damage to property by fire or other casualty, notwithstanding any provision ~~thereof of the policy~~ or contract to the contrary, may surrender the policy for cancellation at any time. Upon surrender, the company issuing the policy shall retain or receive such proportion, and not more, of the premium paid or agreed

to be paid, including policy fees in excess of two dollars on any one policy and other sums of money paid or agreed to be paid in consideration of the ~~policy of~~ insurance policy, as corresponds with the usual short rates upon term policies as adopted and maintained by the organization which promulgates rates for fire insurance on property situated in this state for the time the policy remained in force.

SECTION 58. AMENDMENT. Section 26.1-24-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-24-07. Forfeiture of policy for nonpayment of premium - Notice required. A ~~policy of An~~ insurance policy may not be forfeited, suspended, or impaired, by virtue of any condition or provision ~~thereof of the policy~~, for nonpayment of any note or obligation taken for the premium, or any part ~~thereof~~ of the premium, unless the insurer, not less than thirty days prior to the maturity of the premium, note, or obligation, mails, postage prepaid, to the insured at the insured's usual post-office address, a notice stating:

1. The date when the note or obligation will become due.
2. The amount of principal and interest that then will be due.
3. The effect of nonpayment upon the policy.
4. The right of the insured, at the insured's election, either to pay the premium in full and keep the policy in full force or to terminate the insurance by surrendering the policy and paying such part of the whole premium as it shall have earned.
5. The amount which the insured lawfully is required to pay or which, on account of previous payment, may be due the insured, in case of the insured's election to terminate the insurance on the day of the maturity of the premium, note, or obligation.

SECTION 59. AMENDMENT. Section 26.1-25-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-25-16. **Rebates prohibited.** No broker or agent may knowingly charge, demand, or receive a premium for any ~~policy of~~ insurance policy except in accordance with this chapter. No insurer or employee thereof of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a ~~policy of an~~ insurance policy, or any special favor or advantage in the dividends or other benefits to accrue ~~thereon~~ on the policy, or any valuable consideration or

inducement whatever, not specified in the ~~policy~~ of insurance ~~policy~~, except to the extent provided for in applicable filing. No insured named in a ~~policy of an~~ insurance ~~policy~~, nor any employee of ~~such the~~ insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed agents or brokers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers, dividends, savings, or unabsorbed premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond.

SECTION 60. AMENDMENT. Section 28-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-04-02. Personal actions having venue where subject matter is located. An action for any one of the following causes ~~shall~~ must be tried in the county in which the subject of the action, or some part ~~thereof of the subject~~, is situated, subject to the power of the court to change the place of trial in the cases provided by statute:

1. For the recovery of personal property distrained for any cause; and
2. For recovery on a ~~policy of an~~ insurance ~~policy~~ for loss or damage to the property insured, and such property at the time of its loss or damage ~~shall be~~ is deemed the subject matter of ~~such the~~ action.

SECTION 61. AMENDMENT. Section 31-12-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-12-06. Chapter does not apply if decedent provides otherwise. This chapter ~~shall~~ does not apply in the case of wills, living trusts, deeds, or ~~contracts of~~ insurance ~~contracts~~, or any other situation where provision is made for distribution of property different from the provisions of this chapter, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

SECTION 62. AMENDMENT. Section 32-12.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-05. Liability insurance policy coverage. Except for punitive or exemplary damages for which a political subdivision may be held liable, a ~~policy or contract of an~~ insurance ~~policy or insurance contract~~ purchased by a political subdivision pursuant to ~~the provisions of~~ this chapter may provide coverage for liabilities established by this chapter and may provide such additional coverage as the governing body of the political subdivision determines to be appropriate. The insurer ~~shall~~ 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 ~~shall~~ must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision pursuant to any other provision of law.

SECTION 63. AMENDMENT. Section 32-12.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-06. Statement to ~~insurance~~ commissioner. The insurer under any ~~policy of~~ insurance policy purchased pursuant to this chapter shall certify to the commissioner that the policy is sufficient to provide coverage to the limitations established by this chapter. The statement of certification ~~shall~~ must be in a form prescribed by the commissioner, and the commissioner may require ~~polices of~~ insurance policies purchased by political subdivisions to meet ~~such~~ any other specifications as the commissioner determines are necessary to provide coverage to political subdivisions in the manner required by this chapter. If premium savings will result therefrom, ~~polices of~~ insurance policies may be written for a period which exceeds one year with the approval of the commissioner.

SECTION 64. AMENDMENT. Subsection 1 of section 32-12.1-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state or any state agency, bureau, or department may insure against liabilities provided by this chapter for its own protection and for the protection of any state employee. If a premium savings will result therefrom, the ~~polices of~~ insurance policies may be taken out for more than one year, but in no event beyond a period of five years.

SECTION 65. AMENDMENT. Subsection 1 of section 39-01-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state ~~of North Dakota~~ or any department, agency, or bureau, as well as any county, city, or other political subdivision including townships, school districts, and park districts using or operating motor vehicles and aircrafts, ~~are hereby authorized to may~~ carry insurance for their own protection and for the protection of any employees from claims for loss or damage arising out of or by reason of the use or operation of the motor vehicle or aircraft, whether the vehicle or aircraft at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise. If a premium savings will result therefrom, the ~~polices of~~ insurance

policy may be taken out for more than one year, but in no event beyond a period of five years.

SECTION 66. AMENDMENT. Subsection 7 of section 39-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. For failure to maintain security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance on a motor vehicle as required by chapter ~~26-41~~ 26.1-41.

* SECTION 67. AMENDMENT. Subsections 2, 3, and 4 of section 39-04-06 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. ~~Whenever~~ When the person to whom the registration card or registration number plates have been issued makes or permits any unlawful use of the same or permits the use thereof by a person or on a vehicle not entitled thereto.
3. ~~Whenever~~ When the commissioner finds that a vehicle is registered in accordance with a reciprocity agreement, arrangement, or declaration and the vehicle is operated in violation of the agreement.
4. When the department determines that a motor vehicle is not covered by security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance as required by chapter ~~26-41~~ 26.1-41.

SECTION 68. AMENDMENT. Subsection 7 of section 39-05-20.3 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. For failure to provide security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance on a motor vehicle as required by chapter ~~26-41~~ 26.1-41.

SECTION 69. AMENDMENT. Subsection 2 of section 39-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any student who is 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 ~~a policy of~~ an insurance policy covering any damage which may be done by any such student while operating the vehicle, and

* NOTE: Section 39-04-06 was also amended by section 1 of Senate Bill No. 2169, chapter 417.

provided further that proof of ~~such~~ coverage is filed with the ~~department superintendent~~ of public instruction by the school district's insurance carrier. The amount of the insurance coverage ~~shall~~ must be in the amount of ten thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to ~~said~~ the limit for one person, in the amount of twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars because of injury to or destruction of property of others in any one accident.

* SECTION 70. AMENDMENT. Section 39-16-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-05. Suspension of license and when not applicable. The commissioner, within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of four hundred dollars, shall suspend the license of each driver of each vehicle in any manner involved in such accident, and if such driver is a nonresident, the commissioner shall suspend the driver's privilege of operating a motor vehicle within this state unless ~~such~~ the driver shall deposit security as provided in sections 39-16-09 and 39-16-10 in a sum which ~~shall be~~ is sufficient in the judgment of the commissioner to satisfy any judgment or judgments for damages resulting from ~~such~~ the accident as may be recovered against such driver, provided that notice of ~~such~~ suspension and opportunity for hearing ~~shall~~ must be sent by the commissioner to ~~such~~ the driver not less than ten days prior to the effective date of ~~such~~ the suspension and ~~shall~~ must state the amount required as security. However, if a driver, either resident or nonresident, involved in ~~such~~ the accident purchases a ~~policy~~ policy of an insurance policy with at least the amount of coverage required by this section, and files proof and satisfies financial responsibility requirements thereof with the commissioner, that driver ~~shall be allowed to may~~ retain his the license or privilege until such time as the driver has accepted responsibility for the accident or agreed to a settlement of claims arising from the accident or until a court of this state has determined that the driver was negligent or responsible for the accident in whole or in part. If the driver is found negligent or responsible for the accident, in whole or in part, ~~his~~ the license or privilege ~~shall~~ must be suspended and ~~shall~~ will not be returned until the driver complies with ~~the provisions~~ of this chapter. This section ~~shall~~ does not apply under the conditions stated in section 39-16-06, or:

1. To a driver, if ~~he~~ the driver is the owner of the motor vehicle involved in the accident and had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in ~~such~~ the accident, affording substantially the same coverage as is required for proof of financial responsibility under chapter 39-16.1.

* NOTE: Section 39-16-05 was also amended by section 3 of House Bill No. 1331, chapter 435, and amended by section 1 of House Bill No. 1369, chapter 442.

2. To a driver, if not the owner of such the motor vehicle, if there was in effect at the time of such the accident an automobile liability policy or bond with respect to his the driver's operation of the motor vehicle, affording substantially the same coverage as required for proof of financial responsibility under chapter 39-16.1.
3. To a driver, if the liability of such the driver for damages resulting from such the accident is, in the judgment of the commissioner, covered by any other form of liability insurance policy or bond or certificate of self-insurance under section 39-16-32.

No such policy or bond ~~shall be~~ is effective under this section unless by an insurance carrier or surety company authorized to do business in this state, except that if such the motor vehicle was not registered in the state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such the policy or bond ~~shall is~~ not be effective under this section unless the insurance carrier or surety company, if not authorized to do business in this state, shall execute a power of attorney authorizing the commissioner to accept service, on its behalf, of notice or process in any action upon such the policy or bond arising out of such the accident; provided, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to ~~said the~~ the limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident. Upon receipt of notice of such the accident, the insurance carrier or surety company which issued such the policy or bond shall furnish for filing with the commissioner a written notice that such the policy or bond was in effect at the time of such the accident, or the department may rely upon the accuracy of the information and the required report of an accident as to the existence of insurance or a bond unless and until the department has reason to believe that the information is erroneous.

SECTION 71. AMENDMENT. Section 39-16-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-29. Seizure or return of driver's operator's license. Any person whose license is suspended as herein provided, or whose ~~policy of~~ insurance policy or bond, when required under this chapter, is canceled or terminated, or who neglects to furnish other proof upon request of the commissioner shall immediately return his that person's operator's license to the commissioner. If any person fails to return to the commissioner the license as provided herein required by this section, the commissioner shall forthwith direct

any peace officer to secure possession thereof of the license and return the same license to the commissioner.

SECTION 72. AMENDMENT. Subsection 3 of section 39-16.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any person whose license or nonresident's operating privilege has been suspended or is about to be suspended or ~~shall will~~ become subject to suspension under the provisions of this chapter may be relieved from the effect of ~~such the~~ judgment as ~~hereinbefore~~ prescribed in this chapter by filing with the commissioner an affidavit stating that at the time of the accident upon which ~~such the~~ judgment has been rendered the affiant was insured, that the insurer is liable to pay ~~such the~~ judgment, and the reason, if known, why ~~such insurance carrier the insurer~~ has not paid ~~such the~~ judgment. ~~Such That~~ person shall also file the original ~~policy or a copy of the insurance of a copy thereof~~ policy, if available, and ~~such any~~ other documents as the commissioner may require to show that the loss, injury, or damage for which ~~such the~~ judgment was rendered, was covered by ~~such policy of the insurance policy~~. If the commissioner is satisfied from such papers that ~~such the~~ insurer was authorized to issue ~~such policy of the insurance policy~~ at the time and place of issuing ~~such the~~ policy and that ~~such the~~ insurer is liable to pay ~~such the~~ judgment, at least to the extent and for the amounts required in this chapter, the commissioner ~~shall may~~ not suspend ~~such the~~ license or nonresident's operating privilege, or if already suspended shall reinstate them.

SECTION 73. AMENDMENT. Section 39-16.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-20. Seizure or return of driver's operator's license. Any person whose operator's license is suspended as herein provided, or whose ~~policy of~~ insurance policy or bond, when required under this chapter, is canceled or terminated, or who neglects to furnish other proof upon request of the commissioner shall immediately return ~~his the~~ license to the commissioner. If any person fails to return to the commissioner the license as provided herein required by this section, the commissioner shall forthwith direct any peace officer to secure possession thereof of the license and return the same license to the commissioner.

SECTION 74. AMENDMENT. Subsection 7 of section 41-09-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. To a transfer of an interest or claim in or under any ~~policy of~~ insurance policy, except as provided with

respect to proceeds (section 41-09-27) and priorities in proceeds (section 41-09-33).

SECTION 75. AMENDMENT. Subsection 2 of section 43-10.1-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Pre-need funeral service contract" means any contract, other than a ~~contract of an insurance contract~~, under which for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish professional service or personal property to be used in funeral services, or to furnish cemetery merchandise.

SECTION 76. AMENDMENT. Section 43-13-31 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-31. Discrimination in optometric services prohibited. A person may not discriminate between licensed practitioners of optometry and physicians, or interfere with any individual's right to free choice of ocular practitioner, with respect to the providing of professional services within the scope of section 43-13-01. If a group health, accident or disability policy or ~~contract of insurance contract~~, or any other type of employee group benefit or safety program specifically provides for the payment of optometric services within the scope of section 43-13-01, the payment must be made regardless of whether the service is performed by a physician or optometrist. This section does not apply to medical service contracts written by nonprofit health service corporations.

SECTION 77. AMENDMENT. Section 49-18-33 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-33. Insurance or bond required of common or contract carrier - Liability of insurer and surety - Trial. The commission in granting a certificate or permit to any common motor carrier or contract carrier shall require the owner or operator first to procure either liability and property damage insurance or a surety bond to be approved by the commission as to the form, sufficiency, and surety thereof and written by a company authorized to write such insurance in this state in an amount to be designated by the commission. The conditions of such liability insurance or surety bond ~~shall~~ must be such as to guaranty the payment of any loss or damage to property, or on account of the death of or injury to persons, resulting from the negligence of ~~such~~ the carrier. In any action for damages resulting from the negligence of such carrier, the insurer or surety ~~shall~~ may not be joined as a party defendant nor ~~shall~~ may the fact of the ultimate liability of such insurer or surety be disclosed or commented on to the jury. Upon final judgment the insurer or surety ~~shall become~~ is liable directly to the owner of ~~such~~ the judgment

for the full amount ~~thereof of the judgment~~ but not exceeding the amount of the ~~policy of~~ insurance policy or surety bond applicable to such loss. Each insurance policy or bond so required ~~shall~~ must be filed with the commission and ~~shall~~ must be kept in full force and effect, and upon the failure to do so the certificate or permit ~~shall~~ must be revoked and canceled; provided, that a certificate of any company authorized to write liability or property damage insurance in the state, in a form approved by the commission and certifying that there is in effect a liability insurance policy required by this section, may be filed in lieu of the policy itself. The commission also shall require the owner or operator first to procure a surety bond, written by a company authorized to write such bond in this state, in an amount to be designated by the commission, to guaranty the payment by the carrier to the shipper or its agent, of all cash or collect on delivery charges collected by said carrier in connection with the operation or conduct of his business as such common motor carrier or contract carrier.

SECTION 78. AMENDMENT. Subsection 2 of section 51-07-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the insurance required by any dealer, bank, or other finance agency or company does not provide insurance for bodily injury liability or property damage liability, then the ~~policy of~~ insurance policy or the certificate of insurance, if the policy is filed with the payee, ~~shall~~ must have imprinted or stamped ~~thereon on the policy or certificate~~ a notice that ~~such the~~ policy does not include bodily injury liability or property damage liability insurance. The imprinting or stamping of such notice ~~shall~~ must be in ~~such the~~ manner or form as may be approved by the commissioner of insurance.

SECTION 79. AMENDMENT. Section 54-30-24.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-30-24.1. Bonds as legal investments and security. Notwithstanding any restrictions contained in any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, ~~building and loan asseociations,~~ savings and loan associations, investment companies, and other persons carrying on a banking business, ~~all insurance companies, insurance asseociations and other persens carrying on insurance business,~~ and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued pursuant to this chapter, and ~~such the~~ bonds ~~shall~~ be are authorized security for any and all public deposits.

SECTION 80. A new subsection to section 58-06-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

To insure the township's property which is not required to be insured against loss by fire or tornado by the state fire and tornado fund, in a stock or mutual fire insurance company or in the state fire and tornado fund.

* SECTION 81. AMENDMENT. Section 60-02-10.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-10.1. Revocation and suspension. The commission may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman ~~shall~~ must automatically be suspended for failure at any time to have or to maintain either a bond or ~~policy~~ of insurance policy in the amount and type required.

SECTION 82. AMENDMENT. Section 60-02-35.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license. Upon the existence of an effective ~~policy of insurance policy~~ policy as required in section 60-02-35, the insurance company involved shall give thirty days' advance notice to the commission and the insured by registered ~~or certified~~ mail return receipt requested of any cancellation of the policy. In the event of any insurance cancellation or expiration, the commission, without hearing, shall immediately suspend the license of ~~such~~ the warehouseman, and the suspension ~~shall~~ may not be removed until satisfactory evidence of the existence of an effective ~~policy of insurance policy~~ policy has been submitted to the commission.

Approved March 30, 1985

* NOTE: Section 60-02-10.1 was also amended by section 5 of House Bill No. 1202, chapter 661.

CHAPTER 318

SENATE BILL NO. 2142
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

ESTIMATED INSURANCE PREMIUMS TAX

AN ACT to create and enact a new subsection to section 26.1-03-17 of the North Dakota Century Code, relating to the payment of estimated premium tax; and to amend and reenact subsections 1 and 2 of section 26.1-03-17 of the North Dakota Century Code, relating to premium tax, credits, and penalty.

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

* SECTION 1. AMENDMENT. Subsections 1 and 2 of section 26.1-03-17 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, and finance and service charges received in this state during the preceding calendar ~~quarter year~~, at the rate of two percent with respect to life insurance, one-half of one percent with respect to accident and sickness insurance, and one percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before the sixtieth day after the last day of the calendar quarter March first following the year for which the tax is assessable and shall be deposited in the general fund in the state treasury.
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

* NOTE: Section 26.1-03-17 was also amended by section 10 of Senate Bill No. 2079, chapter 317.

section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, 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, and 26.1-03-19 through 26.1-03-22 and a credit against the tax due ~~for 1982, 1983, 1984, and 1985~~ 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 shall be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

SECTION 2. A new subsection to section 26.1-03-17 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment shall be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of either the total tax paid during the previous calendar year, or eighty percent of the actual tax for the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.

Approved March 22, 1985

CHAPTER 319

HOUSE BILL NO. 1507
(Representatives Whalen, Dorso, Payne)
(Senator Tallackson)

DOMESTIC INSURANCE COMPANY DIRECTORS

AN ACT to amend and reenact sections 26.1-05-05 and 26.1-05-31 of the North Dakota Century Code, relating to the qualifications of directors of insurance companies and deleting the requirement of stock ownership and to salaries, expenses, and pensions of officers and agents of domestic insurance companies.

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

SECTION 1. AMENDMENT. Section 26.1-05-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-05. Qualification of directors - Residence requirements of directors and executive officers. One-third of the directors and a majority of the executive officers of a domestic insurance company must be residents of this state, and each of the directors of the company, if it has capital stock, must be the owner in the director's own right of stock of the company of the par value of at least five hundred dollars.

SECTION 2. AMENDMENT. Section 26.1-05-31 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-31. Salaries and expenses of officers and agents of domestic life company - Restrictions. A domestic life insurance company may not:

1. Pay any salary, compensation, or emolument to any senior officer, trustee, or director thereof, nor any salary, compensation, or emolument to any one person, firm, or corporation amounting in any one year to more than thirty fifty thousand dollars, unless the payment thereof first is authorized by the board of directors of the company.
2. Grant any pension to any officer, director, or trustee thereof, or to any member of the officer's, director's, or trustee's family after death, except that it may provide a pension in pursuance of the terms of a retirement plan adopted by the board of directors and approved by the commissioner for any person who is or has been a salaried officer or employee of the corporation and who may retire by reason of age or disability.

Approved March 31, 1985

CHAPTER 320

HOUSE BILL NO. 1387
(Representatives DeMers, Wald, Haugland)
(Senators Heinrich, Stenehjem, Wenstrom)

INSURANCE BENEFITS FOR SERVICES PERFORMED BY NURSES

AN ACT to create and enact a new section to chapter 26-03 of the North Dakota Century Code, or in the alternative to create and enact a new subdivision to subsection 1 of section 26.1-36-04 and a new subsection to section 26.1-36-05 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, a new section to chapter 26.1-17, and a new subsection to section 26.1-18-12 of the North Dakota Century Code, relating to benefits for services performed by registered nurses.

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

SECTION 1. If Senate Bill No. 2078 does not become effective, a new section to chapter 26-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Services performed by registered nurses - No exclusion of benefits. An insurer or nonprofit health service corporation may not deliver, issue, execute, or renew any individual or group accident and health insurance policy or health service contract that excludes benefits for health care services performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met:

1. The service performed is within the scope of the registered nurse's license;
2. The policy or contract currently provides benefits for identical services performed by a provider of health care licensed by this state;
3. The service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and
4. The policy or contract does not offer, at the option of the individual with respect to an individual policy or contract or the employer or the group or association

representative with respect to a group policy or contract, coverage for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1.

No lack of signature, referral, or employment by any other health care provider, and no provision of chapter 43-17 may be asserted to deny benefits under this section.

SECTION 2. A new subdivision to subsection 1 of section 26.1-36-04 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, is hereby created and enacted to read as follows:

A provision that benefits under the policy may not be denied for any health care service performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met: (1) the service performed is within the scope of the registered nurse's license; (2) the policy currently provides benefits for identical services performed by a provider of health care licensed by this state; (3) the service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and (4) the policy does not offer, at the option of the policyholder, coverage for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1. No lack of signature, referral, or employment by any other health care provider, and no provision of chapter 43-17 may be asserted to deny benefits under this provision.

SECTION 3. A new subsection to section 26.1-36-05 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, is hereby created and enacted to read as follows:

A provision that benefits under the policy may not be denied for any health care service performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met: (1) the service performed is within the scope of the registered nurse's license; (2) the policy currently provides benefits for identical services performed by a health care provider licensed by this state; (3) the service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and (4) the policy does not offer, at the option of the employer, or the group or association representative, coverage for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1. No lack of signature, referral, or employment by any other health care provider, and no provision of chapter 43-17 may be asserted to deny benefits under this provision.

SECTION 4. A new section to chapter 26.1-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Services of registered nurses - Denial of benefits prohibited. Every health service contract must contain a provision that benefits under the health service contract may not be denied for any health care service performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met: (1) the service performed is within the scope of the registered nurse's license; (2) the health service contract currently provides benefits for identical services performed by a health care provider licensed in this state; (3) the service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and (4) the health service contract does not offer, at the option of the individual with respect to an individual contract or the employer or the group or association representative with respect to a group contract, coverage for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1. No lack of signature, referral, or employment by any other health care provider, and no provision of chapter 43-17 may be asserted to deny benefits under this provision.

SECTION 5. A new subsection to section 26.1-18-12 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A provision that benefits under the evidence of coverage may not be denied for any health care service performed by a registered nurse licensed pursuant to chapter 43-12.1 if the following conditions are met: (a) the service performed is within the scope of the registered nurse's license; (b) the evidence of coverage currently provides benefits for identical services performed by a provider; (c) the service is not performed while the registered nurse is employed within a hospital, skilled nursing facility, or intermediate care facility; and (d) the evidence of coverage does not offer coverage, at the option of an individual with respect to an individual evidence of coverage or the employer or the group or association representative with respect to a group evidence of coverage, for services rendered by self-employed registered nurses licensed pursuant to chapter 43-12.1. No lack of signature, referral, or employment by any other provider, and no provision of chapter 43-17 may be asserted to deny benefits under this provision.

Approved March 22, 1985

CHAPTER 321

SENATE BILL NO. 2274
(Moore)

CONTINUING EDUCATION FOR INSURANCE AGENTS

AN ACT to create and enact nine new sections to chapter 26-17.1 of the North Dakota Century Code, or in the alternative to create and enact nine new sections to chapter 26.1-26 of the North Dakota Century Code as created in Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, relating to prelicensure and continuing education for insurance agents; and to provide an appropriation.

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

SECTION 1. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prelicensure education. Any applicant for licensure as an agent, broker, surplus lines broker or consultant shall file with the commissioner, in a form required by the commissioner, evidence that the person attended or participated in approved insurance education programs or courses of not less than eight hours of approved coursework for each major category of insurance for which licensure is sought. For the purpose of this section, the major categories of insurance are life insurance, accident and health insurance, property insurance, and casualty insurance. Coursework must have been completed within six months of the filing of the application for licensure and must have consisted entirely of classroom hours. An applicant is exempt from prelicensure requirements under this section for a major category of insurance if a national insurance designation that would exempt the applicant from written examination pursuant to section 26-17.1-35 has been obtained.

SECTION 2. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuing education required.

1. Beginning January 1, 1987, any person licensed as an agent, broker, surplus lines broker or consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive requirement of seven and one-half hours per year of classroom work. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over fifteen hours of coursework may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each four-year period following licensure, except as provided in subsection 2.
2. On or before January 1, 1986, the commissioner shall by rule divide the persons subject to this section into four equal segments for the purpose of reporting, as follows:
 - a. One-fourth of the persons shall file their report showing fifteen hours or more of approved coursework for the first year under this section within thirty days of January 31, 1987.
 - b. One-fourth of the persons shall file a report showing thirty hours or more of approved coursework for the first two years under this section within thirty days of January 1, 1988.
 - c. One-fourth of the persons shall file a report showing forty-five hours or more of approved coursework for the first three years under this section within thirty days of January 31, 1989.
 - d. One-fourth of the persons shall file a report showing sixty hours or more of approved coursework for the first four years under this section within thirty days of January 31, 1990.
3. All persons licensed after January 1, 1987, shall report within thirty days of the first day of January of the year following the fourth anniversary of the person's licensure.

SECTION 3. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to

chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuing education advisory task force. The commissioner shall appoint a continuing education advisory task force consisting of nine members. The members must be representative, to the extent possible, of the various members of the insurance industry and of the several classes of insurance. Before making appointments to the advisory task force, the commissioner shall solicit nominations from the several professional organizations representing persons selling insurance in this state and from the organizations representing companies authorized to do business in this state. Members are entitled to expenses pursuant to sections 44-08-04 and 54-06-09. The advisory task force may recommend any rules to the commissioner which are necessary to fulfill its duties and powers.

SECTION 4. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Accreditation of courses. The commissioner shall adopt by rule criteria for the accreditation of courses for continuing or prelicensure education. Applications for accreditation of any course offered in this state for continuing or prelicensure education must be submitted to the commissioner on forms prescribed by rule and with a fee of fifty dollars. Application must be made at least three months prior to the proposed date of the course. The advisory task force shall recommend to the commissioner whether any course satisfies the criteria for accreditation and the number of credit hours to be assigned to the course. The commissioner shall make a final determination as to accreditation and assignment of credit hours for courses.

SECTION 5. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Report of compliance. Each person required to report under section 2 of this Act, shall file a written, sworn report of compliance with the commissioner in the form prescribed by rule, with a fee of twenty-five dollars, within thirty days after the close of the period for reporting the person's hours.

SECTION 6. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Extension. The commissioner may grant an extension of time, not to exceed one year, for completion of the requirements imposed by section 2 of this Act.

SECTION 7. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for teaching. Any person teaching or lecturing at any approved continuing education course, seminar, or program qualifies for the same number of hours granted to a person enrolled in the approved course, seminar, or program.

SECTION 8. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for out-of-state courses. The commissioner may approve credit earned at any seminar, course, or program offered for prelicensure or continuing education in another state.

SECTION 9. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, a new section to chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

License revocation.

1. The commissioner shall suspend the license of any person if after holding a hearing, the commissioner finds that the person failed to meet the requirements imposed by this Act. Any license suspended under this subsection must remain suspended until the person has demonstrated, to the satisfaction of the commissioner, compliance with the requirements of this Act and other applicable laws.
2. The commissioner shall, after holding a hearing, suspend the license of any person who has submitted a false or fraudulent certificate of compliance.

SECTION 10. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prelicensure education. Any applicant for licensure as an agent, broker, surplus lines broker or consultant shall file with the commissioner, in a form required by the commissioner, evidence that the person attended or participated in approved insurance education programs or courses of not less than eight hours of approved coursework for each major category of insurance for which licensure is sought. For the purpose of this section, the major categories of insurance are life insurance, accident and health insurance, property insurance, and casualty insurance. Coursework must have been completed within six months of the filing of the application for licensure and must have consisted entirely of classroom hours.

An applicant is exempt from precicensure requirements under this section for a major category of insurance if a national insurance designation that would exempt the applicant from written examination pursuant to section 26.1-26-25 has been obtained.

SECTION 11. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuing education required.

1. Beginning January 1, 1987, any person licensed as an agent, broker, surplus lines broker or consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive the requirement of seven and one-half hours per year of classroom work. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over fifteen hours of coursework may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each four-year period following licensure, except as provided in subsection 2.
2. On or before January 1, 1986, the commissioner shall by rule divide the persons subject to this section into four equal segments for the purpose of reporting, as follows:
 - a. One-fourth of the persons shall file their report showing fifteen hours or more of approved coursework for the first year under this section within thirty days of January 1, 1987.
 - b. One-fourth of the persons shall file a report showing thirty hours or more of approved coursework for the first two years under this section within thirty days of January 1, 1988.
 - c. One-fourth of the persons shall file a report showing forty-five hours or more of approved coursework for the first three years under this section within thirty days of January 1, 1989.

- d. One-fourth of the persons shall file a report showing sixty hours or more of approved coursework for the first four years under this section within thirty days of January 1, 1990.
3. All persons licensed after January 1, 1987, shall report within thirty days of the first day of January of the year following the fourth anniversary of the person's licensure.

SECTION 12. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuing education advisory task force. The commissioner shall appoint a continuing education advisory task force consisting of nine members. The members must be representative, to the extent possible, of the various members of the insurance industry and of the several classes of insurance. Before making appointments to the advisory task force, the commissioner shall solicit nominations from the several professional organizations representing persons selling insurance in this state and from the organizations representing companies authorized to do business in this state. Members are entitled to expenses pursuant to sections 44-08-04 and 54-06-09. The advisory task force may recommend any rules to the commissioner which are necessary to fulfill its duties and powers.

SECTION 13. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

Accreditation of courses. The commissioner shall adopt by rule criteria for the accreditation of courses for continuing or prelicensure education. Applications for accreditation of any course offered in this state for continuing or prelicensure education must be submitted to the commissioner on forms prescribed by rule and with a fee of fifty dollars. Application must be made at least three months prior to the proposed date of the course. The advisory task force shall recommend to the commissioner whether any course satisfies the criteria for accreditation and the number of credit hours to be assigned to the course. The commissioner shall make a final determination as to accreditation and assignment of credit hours for courses.

SECTION 14. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

Report of compliance. Each person required to report under section 11 of this Act, shall file a written, sworn report of compliance with the commissioner in the form prescribed by rule,

with a fee of twenty-five dollars, within thirty days after the close of the period for reporting the person's hours.

SECTION 15. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

Extension. The commissioner may grant an extension of time, not to exceed one year, for completion of the requirements imposed by section 11 of this Act.

SECTION 16. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for teaching. Any person teaching or lecturing at any approved continuing education course, seminar, or program qualifies for the same number of hours granted to a person enrolled in the approved course, seminar, or program.

SECTION 17. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for out-of-state courses. The commissioner may approve credit earned at any seminar, course, or program offered for prelicensure or continuing education in another state.

SECTION 18. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, a new section to chapter 26.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

License revocation.

1. The commissioner shall suspend the license of any person if after holding a hearing, the commissioner finds that the person failed to meet the requirements imposed by this Act. Any license suspended under this subsection must remain suspended until the person has demonstrated, to the satisfaction of the commissioner, compliance with the requirements of this Act and other applicable laws.
2. The commissioner shall, after holding a hearing, suspend the license of any person who has submitted a false or fraudulent certificate of compliance.

SECTION 19. APPROPRIATION. There is hereby appropriated out of any moneys in the bonding fund in the state treasury, not otherwise appropriated, the sum of \$80,000, or so much thereof as may be necessary, to the commissioner of insurance to administer programs to require prelicensure and continuing insurance education, as provided in this Act, for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 4, 1985

CHAPTER 322

SENATE BILL NO. 2468
(Lips, Streibel)

COMPREHENSIVE HEALTH ASSOCIATION ELIGIBILITY

AN ACT to amend and reenact subsection 4 of section 26.1-08-01 and section 26.1-08-12 of the North Dakota Century Code, relating to eligibility qualifications and eligibility requirements for applicants for insurance coverage from the comprehensive health association of North Dakota.

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

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-08-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Eligible person" means an individual who is has been a resident of this state for a period of six months and meets the enrollment requirements of section 26.1-08-12.

* SECTION 2. AMENDMENT. Section 26.1-08-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-12. Enrollment by eligible person.

1. The association plan must be open for enrollment by eligible persons. A person is eligible and may enroll in the plan by submission of a certificate of eligibility an application to the lead carrier. The certificate application must provide:
 - a. The name, address, and age of the applicant, and length of applicant's residence in this state.
 - b. The name, address, and age of spouse and children, if any, if they are to be insured.
 - c. Written evidence that the applicant has been rejected for accident and sickness insurance, or that restrictive riders or a preexisting conditions

* NOTE: Section 26.1-08-12 was also amended by section 27 of Senate Bill No. 2079, chapter 317.

limitation, the effect of which is to reduce substantially coverage from that received by a person considered a standard risk, was required, by at least two insurance companies one insurance company within six months of the date of the certificate application.

- d. A designation of coverage desired.
2. Within thirty days of receipt of the certificate of application, the lead carrier shall either reject the application for failing to comply with the requirements of subsection 1 or forward the eligible person a notice of acceptance and billing information. Insurance is effective immediately upon receipt of the first month's association plan premium, and is retroactive to the date of the application, if the applicant otherwise complies with this chapter.
3. An eligible person may not purchase more than one policy from the association plan.
4. A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first six months of coverage under the association plan if the person was diagnosed or treated for that condition during the ninety days immediately preceding the filing of an date of the application, except that coverage of a preexisting condition during the first six months must be provided upon the insured's payment of an additional premium set by the association and approved by the commissioner. This subsection does not apply to a person who has had continuous coverage under an individual, a family, or group policy during for the year twelve-month period immediately preceding the filing of an application for nonelective procedures or to a person who is treated by nonelective procedures for a congenital or genetic disease.

Approved April 4, 1985

CHAPTER 323

HOUSE BILL NO. 1113
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

UNSATISFIED JUDGMENT FUND REPRESENTATION

AN ACT to amend and reenact section 26.1-23-06 of the North Dakota Century Code, relating to the unsatisfied judgment fund.

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

SECTION 1. AMENDMENT. Section 26.1-23-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-23-06. Attorney general may appear. Section 26.1-23-04 does not apply in the case of any judgment entered by default, unless the commissioner and the attorney general have been given at least thirty days' notice prior to the entry of judgment, to which notice shall be attached a copy of the summons and complaint. Upon receipt of the notice, the attorney general may enter an appearance, file a defense, appear by counsel at the trial, or take any other action the attorney general deems appropriate on behalf of the fund and in the name of the defendant, and may thereupon, on behalf of the fund and in the name of the defendant, conduct a defense, and all acts done in accordance therewith shall be deemed to be acts of the defendant. The attorney general may appear and be heard on any application for payment from the fund and may show cause, if any, why the order applied for should not be made.

Approved March 14, 1985

CHAPTER 324

SENATE BILL NO. 2077
(Legislative Council)
(Interim Industry, Business and Labor Committee)

INSURANCE COMMISSIONER FEES

AN ACT to amend and reenact section 26-17.1-16 or in the alternative section 26.1-26-32 as created by Senate Bill No. 2078 as approved by the forty-ninth legislative assembly, and section 26.1-01-07 of the North Dakota Century Code, relating to fees charged by the commissioner of insurance.

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

SECTION 1. AMENDMENT. If Senate Bill No. 2078 does not become effective, section 26-17.1-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-17.1-16. Fees - Failure to pay. All applications shall be accompanied by the applicable fees as provided in section 26.1-01-07. An appointment terminates upon failure to pay the prescribed annual renewal ~~fee~~ fees.

SECTION 2. AMENDMENT. Section 26.1-01-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-01-07. Fees chargeable by commissioner. The commissioner shall charge and collect the following fees:

1. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.
2. For each original certificate of authority issued upon admittance, fifty dollars and for renewal of certificate of authority, amendment to certificate of authority, or certified copy thereof, twenty-five dollars.
3. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.

4. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, twenty-five dollars.
5. For filing bylaws or amendments thereof, ~~five~~ ten dollars.
6. For filing of articles of merger, or copies thereof, thirty dollars.
7. For receiving the service of process as attorney, whether the commissioner is served with the process or admits service thereon, ~~two~~ ten dollars.
8. For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars.
9. For filing an annual statement, twenty-five dollars.
10. For each abstract of the annual statement of an insurance company for publication, ~~three~~ ten dollars.
11. For an official examination, the actual expense and per diem incurred; but the per diem charge may not exceed thirty-five dollars.
12. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits, and for any renewal of the certificate, ~~five~~ ten dollars.
13. For a written licensee's examination administered by the office of the commissioner, with the examination not to exceed two lines of insurance at any one sitting, twenty dollars.
14. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which shall be paid to the testing service.
15. For issuing and each annual renewal of a resident insurance broker's, surplus lines insurance broker's and insurance consultant'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 and insurance consultant's license, or duplicate thereof, fifteen dollars.

17. For issuing a license for a resident agent or limited insurance representative of a foreign insurance company, or duplicate, ~~three~~ ten dollars.
18. For issuing a nonresident insurance agent's or limited insurance representative's license, or duplicate, ten dollars.
19. For issuing a license for an agent or limited insurance representative of a domestic insurance company, county mutual insurance company, fraternal benefit society, or any other society, or duplicate, ~~three~~ ten dollars.
20. For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ~~three~~ ten dollars.
21. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ~~one dollar~~ ten dollars each.
22. For a copy of any paper filed in the commissioner's office, twenty cents per folio.
23. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ~~one dollar~~ ten dollars.
24. For each insurance company appointment and renewal of an appointment of an insurance agent or limited insurance representative, ten dollars.

Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subsections 2, 10, 11, 13, 19, 22, ~~and 23,~~ and 24.

SECTION 3. AMENDMENT. Section 26.1-26-32 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

26.1-26-32. Renewal of appointments and licenses - Annual fee. An appointment of an insurance agent or limited insurance representative and the license of an insurance broker, surplus lines insurance broker, or insurance consultant terminates upon failure to pay the prescribed annual renewal ~~fee~~ fees before May first.

Approved March 22, 1985

CHAPTER 325

HOUSE BILL NO. 1441
 (Representatives Whalen, Wald)
 (Senator Mutch)

GROUP INSURANCE POLICY REQUIREMENTS

AN ACT to amend and reenact section 26-03.1-04.1 of the North Dakota Century Code or in the alternative to amend and reenact section 26.1-36-06 of the North Dakota Century Code as amended by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly relating to certain options required in group policies.

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

SECTION 1. AMENDMENT. If Senate Bill No. 2078 does not become effective, section 26-03.1-04.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-03.1-04.1. Certain options required in group policies. No insurance company authorized to do business in this state shall deliver, issue, execute, or renew any policy of health insurance which includes coverage of medical benefits on a group, blanket, franchise, or association basis unless the insurer makes available, at the option of the insured policyholder, the following coverages for which an additional premium may be charged:

1. All drugs and medicines prescribed by the provider of health services.
2. Services rendered and care administered by chiropractors licensed under chapter 43-06.

SECTION 2. AMENDMENT. Section 26.1-36-06 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

26.1-36-06. Group health policy and medical service contract options for drugs and chiropractic care. No insurance company or health service corporation may deliver, issue, execute, or renew any health insurance policy or medical service contract that includes coverage of medical benefits on a group, blanket, franchise, or association basis unless the insurer makes available, at the option of the insured or subscriber policyholder, the following coverages for which an additional premium may be charged:

1. All drugs and medicines prescribed by the provider of health services.
2. Services rendered and care administered by chiropractors licensed under chapter 43-06.

Approved March 27, 1985

CHAPTER 326

HOUSE BILL NO. 1211
(Committee on Social Services and Veterans Affairs)
(At the request of the Commissioner of Insurance)

ADDICTION AND SUBSTANCE ABUSE INSURANCE

AN ACT to create and enact section 26-39-03.1 of the North Dakota Century Code, relating to substance abuse benefits for human service centers; and to amend and reenact sections 26-39-01, 26-39-02, 26-39-03, and 26-39-05 of the North Dakota Century Code, relating to mental illness, addiction, and substance abuse insurance coverage; or in the alternative to amend and reenact sections 26.1-36-08 and 26.1-36-09 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, relating to mental illness and addiction insurance coverage and substance abuse coverage.

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

SECTION 1. AMENDMENT. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, section 26-39-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-39-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Licensed treatment facility" means any hospital, as defined in subsection 29 25 of section 52-01-01 and the state department of health rules and regulations pursuant thereto or as licensed under section 23-17.1-01, offering treatment for the prevention or cure of mental illness, alcoholism, drug addiction, or other related illness.
2. "Partial hospitalization" means that level and intensity of treatment that is greater than outpatient treatment, but less than inpatient treatment.
3. "Regional human service center" means a regional human service center licensed under section 50-06-05.2.

SECTION 2. AMENDMENT. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, section 26-39-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-39-02. Insurance companies and health maintenance organizations to comply with chapter. An insurance company or, nonprofit health service corporation, or health maintenance organization, authorized to do business within this state may not deliver, issue, execute, or renew any policy of health insurance or health service contract on a group or blanket or franchise or association basis where more than fifty persons are covered or are to be covered by the policy and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage unless the policy conforms to the requirements of this chapter.

SECTION 3. AMENDMENT. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, section 26-39-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-39-03. Types of coverage required - Licensed treatment facility. Any policy or contract described in section 26-39-02 shall provide benefits, of the same type offered under such policy for other illnesses, for health services to any person covered under such policy, for the diagnosis, evaluation, and treatment of mental illness, alcoholism, drug addiction, or other related illness, in a licensed ~~hospital~~ treatment facility.

SECTION 4. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, section 26-39-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-39-03.1. Types of coverage required - Human service centers. Any policy or contract described in section 26-39-02 must provide benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered by the policy or contract, for the diagnosis, evaluation, and treatment of alcoholism, drug addiction, or other related illness, at a regional human service center, at reimbursement rates that are reasonably similar to the charges for care provided by licensed treatment facilities.

SECTION 5. AMENDMENT. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, section 26-39-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-39-05. Other policies. This chapter does not prevent any insurance company, health maintenance organization, or nonprofit health service corporation from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to

those required by this chapter, where the policy or contract is not subject to such provisions.

SECTION 6. AMENDMENT. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, section 26.1-36-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-08. Group health policy and health service contract substance abuse coverage.

1. An insurance company or nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis where more than fifty persons are covered or are to be covered by the policy or contract and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of alcoholism, drug addiction, or other related illness, in a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health's rules pursuant thereto or as licensed under section 23-17.1-01 or in a regional human resource center licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness. For health services provided in regional human service centers, reimbursement rates must be reasonably similar to the charges for care provided by hospitals as defined in this section.
2. The benefits may be provided for inpatient treatment and treatment by partial hospitalization:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of seventy days of services covered under this section and section 26.1-36-09 in any calendar year.
 - b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred forty days of services covered under this section and section 26.1-36-09 in any calendar year.
 - c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is

equivalent to two days of treatment by partial hospitalization.

"Partial hospitalization" means that level and intensity of treatment that is greater than outpatient treatment, but less than inpatient treatment.

3. This section does not prevent any insurance company ~~or~~, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

SECTION 7. AMENDMENT. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, section 26.1-36-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-09. Group health policy and health service contract mental ~~illness~~ disorder coverage.

1. An insurance company ~~or~~, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis where more than fifty persons are covered or are to be covered by the policy or contract and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental ~~illness~~ disorder and other related illness in a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health's rules pursuant thereto or as licensed under section 23-17.1-01, offering treatment for the prevention or cure of mental ~~illness~~ disorder and other related illness.
2. The benefits may be provided for inpatient treatment and treatment by partial hospitalization:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of seventy days of services covered under this section and section 26.1-36-08 in any calendar year.
 - b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred forty days of services covered

under this section and section 26.1-36-08 in any calendar year.

- c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization.

"Partial hospitalization" means that level and intensity of treatment that is greater than outpatient treatment, but less than inpatient treatment.

3. This section does not prevent any insurance company ~~or~~ nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

Approved March 27, 1985

CHAPTER 327

SENATE BILL NO. 2395
(Reiten)

HEALTH INSURANCE CLAIM FORM

AN ACT to create and enact a new section to chapter 26-06, or in the alternative to create and enact a new section to chapter 26.1-36 as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, and a new subdivision to subsection 9 of section 26.1-04-03 of the North Dakota Century Code, relating to a standard health insurance claim form, claim payment time limits, and unfair insurance practices.

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

SECTION 1. If Senate Bill No. 2078 is not approved by the forty-ninth legislative assembly or does not become effective, a new section to chapter 26-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

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, deny the claim, or request additional information. Within fifteen business days of the receipt of additional information, the insurer or health service corporation shall pay or deny the claim.

SECTION 2. A new subdivision to subsection 9 of section 26.1-04-03 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Failure to use the standard health insurance proof of loss and claim form or failure to pay a health insurance claim as required by this Act.

SECTION 3. If Senate Bill No. 2078 is approved by the forty-ninth legislative assembly and becomes effective, a new section to chapter 26.1-36 of the North Dakota Century Code is hereby created and enacted to read as follows:

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, deny the claim, or request additional information. Within fifteen business days of the receipt of additional information, the insurer shall pay or deny the claim.

Approved March 28, 1985

CHAPTER 328

HOUSE BILL NO. 1167
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

JUVENILE ACCIDENT AND SICKNESS INSURANCE

AN ACT to amend and reenact section 26-03.1-13 of the North Dakota Century Code, or in the alternative to amend and reenact section 26.1-36-20 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, relating to conditions for the continuation of a juvenile's accident and sickness insurance coverage.

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

SECTION 1. AMENDMENT. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, then section 26-03.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-03.1-13. Juvenile's insurance coverage to continue - Conditions. Insurance companies licensed within this state shall continue coverage of a juvenile insured under a policy of accident and sickness insurance while the legal custody of the juvenile has been given by a court, under chapter 27-20, to any state public institution or agency, to the same extent as the general public is covered as long as the juvenile meets all the other usual qualifications for insurability and continues to pay the policy premiums. Under no circumstances shall a juvenile's incarceration be a basis for cancellation of his or her policy of accident and sickness insurance.

SECTION 2. AMENDMENT. Section 26.1-36-20 of the North Dakota Century Code as created by Senate Bill No. 2078 as approved by the forty-ninth legislative assembly is hereby amended and reenacted to read as follows:

26.1-36-20. Juvenile's accident and health coverage to continue - Conditions. Insurance companies and nonprofit health service corporations licensed in this state shall continue coverage of a juvenile insured under an accident and health insurance policy or a health service contract while the legal custody of the juvenile has been given by a court, under chapter 27-20, to any state public institution or agency, to the same extent as the general public is covered as long as the juvenile meets all the other usual qualifications for insurability and continues to pay the policy or contract premiums. A juvenile's incarceration may not be a basis for cancellation of the juvenile's accident and health insurance policy or health service contract.

CHAPTER 329

SENATE BILL NO. 2359
(Lips)

FIRE INSURANCE POLICIES

AN ACT to amend and reenact sections 26-18-07 and 26-18-08 of the North Dakota Century Code, or in the alternative to amend and reenact sections 26.1-39-04 and 26.1-39-05 of the North Dakota Century Code as created and enacted by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, relating to the measure of indemnity on fire insurance policies, the payment of the face value of an insurance policy on a loss, to nonapplication to personal property, the right of insurer to replace property in lieu of a cash payment, and the right of an insurer to offer a special endorsement.

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

SECTION 1. AMENDMENT. If Senate Bill No. 2078 does not become effective section 26-18-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-18-07. Measure of indemnity on fire insurance policy. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy. If there is a valuation in the policy, such valuation is conclusive between the parties thereto in the adjustment either of a partial or a total loss if the insured has some interest at risk and there is no fraud on his part. In the event of a partial loss, the insurer is liable only for such proportion of the amount insured by it as the loss bears to the value of the whole interest of the insured in the property insured. A valuation fraudulent in fact, however, entitles the insurer to rescind the contract. The provisions of this section shall not be construed as a revocation of any of the rights of insurers delineated in section 26-18-08.

SECTION 2. AMENDMENT. If Senate Bill No. 2078 does not become effective section 26-18-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-18-08. Face of policy to be paid in case of loss by fire of insured real property.

1. This section does not apply as to personal property or any interest therein.
2. Whenever any policy of insurance shall be written to insure any real property in this state against loss by fire and the insured property shall be wholly destroyed by fire without fraud on the part of the insured or his assigns, the stated amount of the insurance written in such policy shall be taken conclusively to be the true value of the property insured.

SECTION 3. AMENDMENT. Section 26.1-39-04 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

26.1-39-04. Measure of indemnity on fire policy. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy. If there is a valuation in the policy, the valuation is conclusive between the parties in the adjustment either of a partial or a total loss if the insured has some interest at risk and there is no fraud on the insured's part. In the event of a partial loss, the insurer is liable only for the proportion of the amount insured as the loss bears to the value of the whole interest of the insured in the property insured. A valuation fraudulent in fact, however, entitles the insurer to rescind the contract. The provisions of this section shall not be construed as a revocation of any of the rights of insurers delineated in section 26.1-39-05.

*** SECTION 4. AMENDMENT.** Section 26.1-39-05 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

26.1-39-05. Face of fire policy to be paid in case of loss of fire.

1. This section does not apply as to personal property or any interest therein.
2. Whenever any insurance policy is written to insure any real property in this state against loss by fire and the insured property is wholly destroyed by fire without fraud on the part of the insured or the insured's assigns, the stated amount of the insurance written in the policy is the true value of the property insured.

Approved March 28, 1985

* NOTE: Section 26.1-39-05 was also amended by section 3 of House Bill No. 1245, chapter 330.

CHAPTER 330

HOUSE BILL NO. 1245
(Dorso)

FIRE INSURANCE AND ARSON INVESTIGATIONS

AN ACT to amend and reenact subsections 3 and 7 of section 18-01-05.1, and section 26-18-08 or in the alternative section 26.1-39-05 as created by Senate Bill No. 2078 as approved by the forty-ninth legislative assembly, of the North Dakota Century Code, relating to fire insurance and arson investigations; and to repeal section 26-05-08 or in the alternative section 26.1-31-07 as created by Senate Bill No. 2078 as approved by the forty-ninth legislative assembly, of the North Dakota Century Code, relating to double fire insurance coverage.

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

SECTION 1. AMENDMENT. Subsections 3 and 7 of section 18-01-05.1 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, then, for the purpose of having such fire loss investigated by the state fire marshal, or a law enforcement officer as defined by section 12.1-01-04, the company ~~may shall~~, in writing, notify the state fire marshal or law enforcement officer and provide ~~him with~~ any or all material developed from the company's inquiry into the fire loss.
7. The state fire marshal, any law enforcement officer, and any insurance company that ~~receieve~~ receives any information furnished pursuant to this section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding. The state fire marshal and any law enforcement officer shall testify, if requested, in any litigation in which the insurance company at interest is named as a party.

SECTION 2. AMENDMENT. If Senate Bill No. 2078 is not approved by the forty-ninth legislative assembly or does not become effective, section 26-18-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-18-08. Face of policy to be paid in case of loss by fire or lightning of insured real property. Whenever any policy of insurance shall be is written or renewed to insure any real property in this state, including structures owned by persons other than the insured, against loss by fire or lightning and the insured property shall be is completely destroyed by fire without fraud on the part of the insured or his assigns, the stated amount of the insurance written in such the policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages, subject to the following conditions:

1. If the fire loss occurred within ninety days after the policy was issued or within ninety days after the policy limits were increased by twenty-five percent or more at the insured's request, the loss payable to the insured for fire loss incurred during the first ninety days shall be the full value of the policy, or the actual cash value or replacement cost of the property, whichever is less. This subsection does not apply to unchanged renewal policies or policies with inflation adjustment limits.
2. Builder risk policies of insurance covering property in the process of being constructed must be valued and settled according to the actual value of that portion of construction completed at the time of the fire or lightning loss.
3. In case of double fire insurance, each insurer must contribute proportionally towards the loss without regard to the dates of the insurance policies.

* SECTION 3. AMENDMENT. If Senate Bill No. 2078 is approved by the forty-ninth legislative assembly and does become effective, section 26.1-39-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-39-05. Face of fire policy to be paid in case of loss by fire or lightning. Whenever any insurance policy is written or renewed to insure any real property in this state including structures owned by persons other than the insured, against loss by fire or lightning and the insured property is completely or partially destroyed by fire without fraud on the part of the insured or the insured's assigns, the stated amount of the insurance written in the policy is the true value of the property insured and the true amount of loss and measure of damages, subject to the following conditions:

1. If the fire loss occurred within ninety days after the policy was issued or within ninety days after the policy limits were increased by twenty-five percent or more at

* NOTE: Section 26.1-39-05 was also amended by section 4 of Senate Bill No. 2359, chapter 329.

the insured's request, the loss payable to the insured for fire loss incurred during the first ninety days shall be the full value of the policy, or the actual cash value or replacement cost of the property, whichever is less. This subsection does not apply to unchanged renewal policies or policies with inflation adjustment limits.

2. Builder risk policies of insurance covering property in the process of being constructed must be valued and settled according to the actual value of that portion of construction completed at the time of the fire or lightning loss.
3. In case of double fire insurance, each insurer must contribute proportionally toward the loss without regard to the dates of the insurance policies.

SECTION 4. REPEAL. If Senate Bill No. 2078 is not approved by the forty-ninth legislative assembly or does not become effective, section 26-05-08 of the North Dakota Century Code is hereby repealed. If Senate Bill No. 2078 is approved by the forty-ninth legislative assembly and becomes effective, section 26.1-31-07 of the North Dakota Century Code is hereby repealed.

Approved March 14, 1985

CHAPTER 331

SENATE BILL NO. 2426
(Reiten)

MEDICAL AND LEGAL LIABILITY INSURANCE

AN ACT to amend and reenact subsection 3 of section 26-02-47 and subsection 1 of section 26-02-54 of the North Dakota Century Code, or in the alternative to amend and reenact subsection 3 of section 26.1-39-10 and subsection 1 of section 26.1-39-16 of the North Dakota Century Code as created in Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, relating to declination, cancellation, and nonrenewal of medical and legal liability insurance coverage.

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

SECTION 1. AMENDMENT. If Senate Bill No. 2078 is not approved by the forty-ninth legislative assembly or does not become effective, subsection 3 of section 26-02-47 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Legal liability of the named insured arising out of bodily injury to or death of any persons or damage to property, except bodily injury, death, or property damage arising out of business pursuits ~~or the rendering or failure to render professional services~~ other than professional legal or medical services.

SECTION 2. AMENDMENT. If Senate Bill No. 2078 is not approved by the forty-ninth legislative assembly or does not become effective, subsection 1 of section 26-02-54 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No insurer shall fail to renew a policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the last known address of the named insured, at least thirty days prior to the expiration date of the policy, except that where the policy provides professional liability coverage for legal or medical services, the nonrenewal notice must be mailed or delivered at least ninety days prior to the policy expiration date. A

post-office department certificate of mailing to the named insured at his last known address shall be conclusive proof of mailing and receipt on the third calendar day after the mailing.

SECTION 3. AMENDMENT. If Senate Bill No. 2078 is approved by the forty-ninth legislative assembly and becomes effective, subsection 3 of section 26.1-39-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Legal liability of the named insured arising out of bodily injury to or death of any persons or damage to property, except bodily injury, death, or property damage arising out of business pursuits ~~or the rendering or failure to render professional services~~ other than professional legal or medical services.

SECTION 4. AMENDMENT. If Senate Bill No. 2078 is approved by the forty-ninth legislative assembly and becomes effective, subsection 1 of section 26.1-39-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No insurer may fail to renew a property insurance policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the last known address of the named insured, at least thirty days prior to the expiration date of the policy, except that where the policy provides professional liability coverage for legal and medical services, the nonrenewal notice must be mailed or delivered at least ninety days prior to the policy expiration date. A postal service certificate of mailing to the named insured at the insured's last known address is conclusive proof of mailing and receipt on the third calendar day after the mailing.

Approved March 29, 1985

CHAPTER 332

HOUSE BILL NO. 1528
(Timm, Koland)

NO-FAULT INSURANCE COVERAGE

AN ACT to amend and reenact subsections 2 and 18 of section 26-41-03 and section 26-41-06 of the North Dakota Century Code, or in the alternative to amend and reenact subsections 2 and 21 of section 26.1-41-01 and section 26.1-41-04 of the North Dakota Century Code as created by Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, relating to levels of no-fault insurance coverage and the definition of serious injury.

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

SECTION 1. AMENDMENT. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, subsections 2 and 18 of section 26-41-03 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read 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 shall not exceed ~~fifteen~~ thirty thousand dollars, regardless of the number of persons entitled to such benefits or the number of basic no-fault insurers obligated to pay such benefits. Basic no-fault benefits payable shall not exceed one hundred fifty dollars per week per person prorated for any lesser period for work loss or survivors income loss, or one thousand dollars for funeral, cremation, and burial expenses.
18. "Serious injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of ~~one~~ two thousand five hundred dollars. An injured person who is furnished the services in subsection 7 ~~of this section~~ without charge or at less

than the average reasonable charge therefor in this state shall be deemed to have sustained a serious injury if the court determines that the fair and reasonable value of such services exceeds ~~one~~ two thousand five hundred dollars.

SECTION 2. AMENDMENT. If Senate Bill No. 2078 of the forty-ninth legislative assembly does not become effective, section 26-41-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-41-06. Optional excess no-fault benefits. Each basic no-fault insurer of the owner of a secured motor vehicle shall also make available optional excess no-fault benefits for excess economic loss commencing upon the exhaustion of basic no-fault benefits, up to a total of ~~forty~~ eighty thousand dollars in no-fault benefits for accidental bodily injury to any one person in any one accident. Nothing contained herein shall prevent any basic no-fault insurer from also offering benefits and limits other than those prescribed herein, nor shall this section be construed as preventing any basic no-fault insurer from incorporating in such optional excess no-fault coverage such terms, conditions, and exclusions as may be consistent with the premiums charged. The amounts payable under optional excess no-fault benefits may be duplicative of benefits received from any collateral sources or may be written in excess of such collateral source benefits, or may provide for reasonable waiting period, deductibles, or coinsurance provisions. The optional excess no-fault benefits of a basic no-fault insurer may provide that it be subrogated to the injured person's right of recovery against any responsible third party.

SECTION 3. AMENDMENT. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, subsections 2 and 21 of section 26.1-41-01 of the North Dakota Century Code are hereby amended and reenacted to read 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 ~~fifteen~~ 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 thousand dollars for funeral, cremation, and burial expenses.
21. "Serious injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of ~~one~~ two thousand five hundred

dollars. An injured person who is furnished the services in subsection 9 without charge or at less than the average reasonable charge for the service in this state is deemed to have sustained a serious injury if a court determines that the fair and reasonable value of the service exceeds one two thousand five hundred dollars.

SECTION 4. AMENDMENT. If Senate Bill No. 2078, as approved by the forty-ninth legislative assembly, becomes effective, section 26.1-41-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-41-04. Optional excess no-fault benefits. Each basic no-fault insurer of the owner of a secured motor vehicle shall also make available optional excess no-fault benefits for excess economic loss commencing upon the exhaustion of basic no-fault benefits, up to a total of forty eighty thousand dollars in no-fault benefits for accidental bodily injury to any one person in any one accident. A basic no-fault insurer may also offer benefits and limits other than those prescribed in this section, and a basic no-fault insurer may incorporate in optional excess no-fault coverage the terms, conditions, and exclusions as may be consistent with the premiums charged. The amounts payable under optional excess no-fault benefits may be duplicative of benefits received from any collateral sources or may be written in excess of such collateral source benefits, or may provide for reasonable waiting period, deductibles, or coinsurance provisions. The optional excess no-fault benefits of a basic no-fault insurer may provide for subrogation to the injured person's right of recovery against any responsible third party.

Approved April 15, 1985

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 333

HOUSE BILL NO. 1279
(Kretschmar)

JUDICIAL CONFERENCE

AN ACT to amend and reenact sections 27-02-05.2, 27-15-01, 27-15-02, 27-15-03, 27-15-04, 27-15-05, and 27-15-10 of the North Dakota Century Code, relating to changing the name of the judicial council to the judicial conference and changing the membership, terms, organization, duties, and payment of expenses of members of the judicial conference; and to repeal sections 27-15-06, 27-15-08, and 27-15-09 of the North Dakota Century Code, relating to hearings and reports of the judicial council, and the meeting of judges concerning judicial council recommendations.

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

SECTION 1. AMENDMENT. Section 27-02-05.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-05.2. State juvenile services coordinator - Powers and duties - Selection and salary - Administrative support. The position of state juvenile services coordinator is hereby created and established within the office of the North Dakota supreme court administrator. The coordinator shall be selected by the supreme court and must have a background of experience in the juvenile justice system. The coordinator's salary shall be determined by the supreme court. For administrative, budgetary, and organizational purposes the coordinator position shall be considered a part of the supreme court administrator's office, and that office shall provide whatever administrative support is required by the coordinator. The coordinator shall work to establish uniform practices and procedures within the state's juvenile justice system; shall conduct research and planning on methods to improve the juvenile justice system; shall prepare and conduct training programs for juvenile justice personnel; shall work to improve communications and contacts among juvenile justice personnel; shall prepare, after consultation with juvenile justice personnel and juvenile judges, standards for various juvenile justice personnel such as referees, supervisors, and probation officers, which could be adopted by the judicial

~~council~~ conference and the supreme court; and shall perform such other duties and projects as may be directed by the judicial ~~council~~ conference or the supreme court to improve the state's juvenile justice system. The juvenile services coordinator shall make recommendations to the legislative assembly concerning any legislative action he deems necessary or desirable.

SECTION 2. AMENDMENT. Section 27-15-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-01. Judicial ~~council~~ conference established. There shall be maintained is established a judicial ~~council~~ conference consisting of:

1. All judges of the supreme court, district courts, and county courts of the state.
2. The attorney general.
3. The dean of the ~~school of law of the~~ university of North Dakota school of law.
4. Five members of the bar who are engaged in the practice of law who shall be chosen by the board of governors of the state bar association.
5. All ~~retired surrogate judges of~~ appointed by the supreme and district courts of the state court under section 27-17-03.
6. Two municipal judges selected by the North Dakota supreme court municipal judges' association.
7. ~~Two magistrates selected by~~ The clerk of the North Dakota supreme court.

SECTION 3. AMENDMENT. Section 27-15-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-02. Term of office - Vacancy, how filled. The judges of the supreme court, district courts, and county courts, the attorney general, and the dean of the university of North Dakota school of law in the university, and the surrogate judges shall hold office as members of the ~~council~~ judicial conference during the time they occupy their respective official positions. The retired judges of the supreme and district courts shall hold office as members of the ~~council~~ during retirement from their respective official positions. The term of office of the two municipal judges and magistrates who shall be appointed by the supreme court, and 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 who shall be appointed by the state bar

association of North Dakota, shall be two is five years, commencing on the first Monday of January of odd-numbered 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 1. A vacancy shall be filled by the authority originally selecting the member.

SECTION 4. AMENDMENT. Section 27-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-03. Organization of ~~council~~ judicial conference - Rules of procedure. The chief justice, during his term as chief justice, shall be chairman of the judicial council. At the request of the judicial conference, the state court administrator shall serve as the executive secretary shall be chosen by the council either from within or without the council of the judicial conference. The council judicial conference shall make rules for its procedure, organization, election of officers, and the conduct of its business.

SECTION 5. AMENDMENT. Section 27-15-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-04. Meetings. The judicial council shall conference must meet at least twice in each year at such times and places as shall be fixed by the council conference.

SECTION 6. AMENDMENT. Section 27-15-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-05. Duties. The judicial council conference shall make a continuous study of the operation of the judicial system of the state to the end that procedure may be simplified, business expedited, justice better administered, and shall perform any other duties which may be prescribed by law:

1. Solicit, receive, and evaluate suggestions relating to the improvement of the administration of justice.
2. Consider and make recommendations to the supreme court for changes in rules, procedures, or any matter pertaining to the judicial system.
3. Coordinate continuing judicial education efforts for judges and support staff.
4. Establish methods for review of proposed legislation which may affect the operation of the judicial branch.

SECTION 7. AMENDMENT. Section 27-15-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-10. Compensation - Expenses. No member of the council shall conference is entitled to receive compensation for any services rendered by him in that capacity, but any necessary travel expenses, including mileage and subsistence, incurred by any judge of the district or county court, or justice of the supreme court, in the discharge of duties as a member are deemed expenses incurred in the performance of the duties of that office and shall be paid as such. The necessary travel expenses, including mileage and subsistence, incurred in the discharge of duties as a member by retired district court and supreme court judges, municipal court judges and magistrates shall member must be paid from funds appropriated for the purposes of the judicial council conference from the supreme court budget. The necessary travel expenses, including mileage and subsistence, incurred in the discharge of duties as a member by all other members of the council shall be audited and paid from the state bar fund in the same manner as other claims against that fund are paid. Members of the council shall be paid only for necessary travel expenses incurred within this state, unless otherwise authorized by the chief justice of the supreme court.

SECTION 8. REPEAL. Sections 27-15-06 and 27-15-09 of the North Dakota Century Code, and section 27-15-08 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1985

CHAPTER 334

HOUSE BILL NO. 1586
(Representative Wentz)
(Senator Wenstrom)

JUVENILE COURT REFEREES

AN ACT to create and enact a new section to chapter 27-05 of the North Dakota Century Code, relating to the appointment of judicial referees; to amend and reenact subsection 2 of section 14-02.1-03.1, subsection 3 of section 27-20-05, and section 27-20-06 of the North Dakota Century Code, relating to juvenile court referees; and to repeal section 27-20-07 of the North Dakota Century Code, relating to juvenile court referees.

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

SECTION 1. A new section to chapter 27-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Judicial referees.

1. There may be appointed in each judicial district, by the judges of district court having jurisdiction therein, one or more referees to serve at the pleasure of the appointing judges, on a full- or part-time basis. A referee is entitled to receive a salary within the limits of legislative appropriation.
2. A district court judge may assign a referee to preside in any case or proceeding provided for in title 14, chapter 27-20, and chapter 28-25 pursuant to rules of the supreme court.
3. The supreme court may promulgate rules for the qualification of referees, the extent and assignment of authority by the district court judges of the judicial districts, procedure, and the conduct of the office including regulations for training sessions and continuing education.

SECTION 2. AMENDMENT. Subsection 2 of section 14-02.1-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any pregnant woman under the age of eighteen or next friend shall be entitled to apply to the juvenile court for authorization to obtain an abortion without parental consent. Proceedings on such application shall be conducted in the juvenile court of the county of the minor's residence before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-20 27-05, except that the parental notification requirements of chapter 27-20 shall not be applicable to proceedings under this section. All applications in accordance with this section shall 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 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.

SECTION 3. AMENDMENT. Subsection 3 of section 27-20-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. ~~In addition to referees authorized by section 27-20-07, a~~ A judge of the juvenile court, in his discretion, may ~~also~~ provide for the employment of probation officers, clerical, and other specialized personnel under the direction and supervision of the judge, to assist the court and juvenile supervisors in carrying out the

provisions of this chapter. Personnel so employed shall receive as full compensation for their services such amount as may be fixed and approved from time to time by the judge of the juvenile court assisted, within the limits of legislative appropriations, together with reasonable travel expenses, in the manner and subject to the limitations applicable to juvenile supervisors. Detention center facilities and personnel shall be funded by the county.

* SECTION 4. AMENDMENT. Section 27-20-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-06. Powers and duties of juvenile supervisors.

1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a juvenile supervisor shall:
 - a. Make investigations, reports, and recommendations to the juvenile court.
 - b. Receive and examine complaints and charges of delinquency, unruly conduct, or deprivation of a child for the purpose of considering the commencement of proceedings under this chapter.
 - c. Supervise and assist a child placed on probation or in his protection, supervision, or care by order of the court or other authority of law.
 - d. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
 - e. Take into custody and detain a child who is under his supervision or care as a delinquent, unruly, or deprived child if he has reasonable cause to believe that the child's health or safety is in imminent danger, or that he may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this chapter. Except as provided by this chapter, a juvenile supervisor does not have the powers of a law enforcement officer. He may not conduct accusatory proceedings under this chapter against a child who is or may be under his care or supervision.
 - f. Administer oaths.
 - g. Take acknowledgments of instruments for the purpose of this chapter.

* NOTE: Section 27-20-06 was also amended by section 2 of House Bill No. 1341, chapter 343.

- h. Make such temporary order not to exceed thirty days for the custody and control of a deprived child as he may deem appropriate.
 - i. Perform all other functions designated by this chapter or under section 1 of this Act or by order of the court pursuant thereto, including, if qualified, those of a referee. Juvenile supervisors who are were serving as juvenile commissioners on the effective date of this chapter July 1, 1969, may perform the functions of a referee under this chapter without being members of the bar.
 - j. Perform such functions relating to domestic relations matters as directed by his appointing district judge, acting in accordance with section 27-05-29.
2. Any of the foregoing functions may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

SECTION 5. REPEAL. Section 27-20-07 of the 1983 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 27, 1985

CHAPTER 335

SENATE BILL NO. 2285
(Olson)

COURT RECORD DESTRUCTION

AN ACT to amend and reenact sections 11-17-10, 27-07.1-08, and 27-08.1-07 of the North Dakota Century Code, relating to retention and disposition schedules for district court and county court records.

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

SECTION 1. AMENDMENT. Section 11-17-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-10. Certain files not to be destroyed. None Unless otherwise authorized by rules of the supreme court, none of the files may be destroyed in any probate proceeding, any action for divorce, establishing parentage, adoption, change of name, or which otherwise affects the status of any person, or any action that determines or affects title or interest in real property, including quiet title actions, lien foreclosures, partition actions, and executions of judgments.

SECTION 2. AMENDMENT. Section 27-07.1-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-08. Custody of records of county courts. The judge of a county court shall have the care and custody of all the records of the court which relate to actions or proceedings within its civil and criminal jurisdiction. The Unless otherwise directed by rules of the supreme court, the judge may destroy the following records:

1. All papers contained in marriage files, except the original marriage license, if the license is at least five years old.
2. All mental health or insanity files more than twenty years old as determined by the date of the last paper filed. However, no patient's file shall be destroyed unless he

has been dead six years. The judge's investigation shall determine if the patient is alive or his date of death. The clerk of court shall record the destruction and destruction date in the file's index.

3. All receipts, canceled checks, or vouchers filed in support of any report and account rendered by any personal representative, executor, administrator, conservator, or guardian if the filing date of the report and account is at least six years old. When these are destroyed, the clerk of court shall make a record of the destruction and the destruction date in the margin or elsewhere on the report and account affected.

* SECTION 3. AMENDMENT. Section 27-08.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-07. Records and destruction of records. Records Unless otherwise authorized by rules of the supreme court, records of the small claims court shall consist of all documents filed in each action and an index for plaintiffs and defendants. No other books, records, or papers need be kept. After Unless otherwise directed by rules of the supreme court, after the judgment is satisfied, or becomes ten years old, the court may destroy all papers filed in the case, except the judgment. At the time of destroying such papers, the clerk of court shall make a record upon the margin or elsewhere on the judgment identifying the papers destroyed and the date thereof.

Approved March 22, 1985

* NOTE: Section 27-08.1-07 was also amended by section 9 of Senate Bill No. 2275, chapter 337.

CHAPTER 336

SENATE BILL NO. 2116
(Committee on Judiciary)
(At the request of the Supreme Court)

COURT FEES

AN ACT to create and enact a new subsection to section 14-15-09 of the North Dakota Century Code, relating to the fee for filing an adoption petition; and to amend and reenact sections 11-17-04, 11-26-04, 26.1-02-19, 27-07.1-11, 27-07.1-33, 27-08.1-03, 28-20-20, 28-20.1-05, 30.1-28-03, 32-37-05, 35-18-04, 35-21-05, 35-24-12, 43-01-19, 43-20-04, 44-06-03, and 57-22-32 of the North Dakota Century Code, relating to fees to be charged by the clerks of the district and county courts.

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

SECTION 1. AMENDMENT. Section 11-17-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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:

- 1- For the filing of an action, including an action transferred from another county, and for all things in connection therewith which are not hereinafter provided for, fifteen dollars.
- 2- For issuing a regular or special execution in an action, two dollars.
- 3- For filing a regular or special execution on return, one dollar.
- 4- Repealed by S-L 1981, ch- 361, § 6-
- 5- For filing and indexing any paper authorized to be filed in his office but not connected with a civil action or proceeding, one dollar.

- 6- For making a certified abstract or exemplified copy of a judgment or a certified or exemplified copy of judgment, order, or other paper filed or recorded in his office, for the first four pages, one dollar, and for each additional page, fifty cents-
- 7- For approving the bond of a notary public, one dollar-
- 8- For entering and indexing the commission of a notary public, one dollar-
- 9- For taking an acknowledgment or administering an oath, one dollar-
- 10- For recording and indexing any paper not filed in an action or proceeding, for the first four pages, one dollar, and for each additional page, fifty cents-
- 11- For a certificate of official capacity of a notary public or other officer, one dollar-
- 12- For certifying an abstract of real property as to judgments and liens, for each person named in the abstract as to whom search is made, one dollar-
- 13- For issuing a commission to take depositions, two dollars-
- 14- For certifying the record on appeal to the supreme court or to the district court of any other county and transmitting the same, ten dollars-
- 15- For all services on remittitur from supreme court, five dollars-
- 16- For taking depositions, for each page, one dollar-
- 17- For making a certified transcript of any judgment, two dollars-
- 18- For filing and docketing a transcript of a judgment from a county court or from any other county, two dollars-
- 19- For filing and entering an affidavit and other papers for the renewal of a judgment, two dollars-
- 20- Repealed by S.B. 1983, ch. 498, § 8-
- 21- For all services in adoption proceedings, five dollars-
- 22- For all services in proceedings for deposit in court, five dollars-
- 23- For filing and indexing the notice of intent to file a mechanic's lien pursuant to section 35-27-12, two dollars-

- 24- For issuing an identification card, three dollars-
- 25- For filing a hospital lien, two dollars-
- 26- For filing a satisfaction of judgment, one dollar-
- 27- For preparing a subpoena, one dollar-
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 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.

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.

SECTION 2. AMENDMENT. Section 11-26-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-26-04. Meetings of board, when held - Fees. Whenever a debtor or creditor calls for assistance upon the debt adjustment board of the county within which the debtor resides and pays to the clerk of the district court a filing fee ~~of five dollars~~ as prescribed in subsection 3 of section 11-17-04, such clerk shall call a meeting of the debtor and his creditors with the board at the earliest possible date. The clerk shall notify the members of the board and the debtor and creditors of the time and place of such meeting. If a debtor requesting a meeting makes and files an affidavit stating that he is financially unable to pay the fee provided for in this section, the payment thereof shall be waived.

SECTION 3. A new subsection to section 14-15-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any person filing a petition shall pay to the clerk of court a filing fee as prescribed in subsection 1 of section 11-17-04.

SECTION 4. AMENDMENT. Section 26.1-02-19 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-02-19. Fees. Any person filing a foreign decree shall pay a ten dollar filing fee as prescribed in subsection 3 of section 11-17-04 to the clerk of court. Fees for docketing, transcriptions, or other enforcement proceedings are as provided for decrees of the district court.

SECTION 5. AMENDMENT. Section 27-07.1-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-11. Fees to be charged by the clerk of county court. The clerk of a county court shall charge and collect the same fees as are prescribed in section 11-17-04, except that the clerk shall charge and collect the following fees:

- 1- For filing a petition for letters testamentary, of administration, of guardianship, or proceedings in heirship, twenty dollars. No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual habilitation plan team for the incapacitated person or any state employee in the performance of official duties.
- 2- For applications in joint tenancy to determine estate tax, ten dollars.
- 3- For filing of civil action in the county court, ten dollars, and from time to time thereafter the clerk may require additional deposits to be made to cover the fees as they accumulate.
- 4- For default judgments in civil actions, including all fees prior to execution, five dollars.
- 5- For a certified abstract or transcript of any judgment in any civil action, one dollar.

Upon the entry of judgment in any civil action, the clerk shall refund to the proper party the amount of all moneys deposited with him in excess of the legal fees accrued in the action.

SECTION 6. AMENDMENT. Section 27-07.1-33 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-33. Procedure permitting pleading of cross-claims or counterclaims in excess of jurisdiction of county courts. In all civil actions instituted in a county court a defendant shall have the right to plead a cross-claim or a counterclaim, compulsory or permissive, in excess of the jurisdiction of the court. When the amount in controversy measured by the value of the relief sought in either a cross-claim or counterclaim exceeds ten thousand dollars or asks for affirmative equitable relief, the county court shall

proceed no further with a determination of the rights of the parties provided that the pleading in excess of jurisdiction is accompanied by a motion requesting that the case be transferred to the district court of the same county as the court from which the transfer is requested. The movant shall tender, with his motion, a filing fee of fifteen dollars which shall be paid to the clerk of the district court in event the motion is granted. clerk of the district court may not charge or collect an additional fee from the moving party for filing the case in district court. In the absence of a motion the cross-claim or counterclaim must be stricken and the case must proceed as though no counterclaim or cross-claim had been pleaded.

When the transfer of a case from the county court to the district court has been ordered pursuant to this section, the clerk of the county court shall certify to the district court all of the original pleadings and other papers and documents pertaining to the case accompanied by a certified copy of the order of transfer and an itemized certificate of transmittal. Upon receipt of a certificate and order, the district court shall have the jurisdiction to proceed with the case as though it had been originally commenced in the district court including the power to permit or direct appropriate amendments of pleadings.

* SECTION 7. AMENDMENT. Section 27-08.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 one thousand five hundred dollars, which shall be delivered to the plaintiff in person 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 shall not apply to counterclaims in excess of one thousand five hundred 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 the provisions of 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 of five dollars as prescribed in subsection 2 of section 11-17-04 shall be

* NOTE: Section 27-08.1-03 was also amended by section 2 of House Bill No. 1588, chapter 340.

charged for filing the claim affidavit, ~~or counterclaim affidavit,~~
plus one dollar for each defendant served.

* SECTION 8. AMENDMENT. Section 28-20-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-20. Assignment of judgment to be entered in judgment book. Every clerk of the district court, upon the presentation to him of an assignment of any judgment rendered or docketed in such court, signed by the party in whose favor the judgment is rendered, or by his executor or administrator, and acknowledged in the manner prescribed by law for the acknowledgment of deeds, must enter the same immediately in the judgment book and must note the fact of such assignment, the date thereof, and the name of the assignee, in the margin of the entry of such judgment in such judgment book and also upon the docket of such judgment. No filing fee may be charged or collected by the clerk of district court for entering an assignment of a judgment. The clerk of the district court of any other county where such judgment is docketed must note the fact of such assignment, the date thereof, and the name of the assignee, upon the presentation to and filing with him of a certified copy of the original judgment docket with the facts of such assignment noted thereon.

SECTION 9. AMENDMENT. Section 28-20.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20.1-05. Fees. Any person filing a foreign judgment shall pay to the clerk of court a filing fee ~~of seven dollars and fifty cents~~ as prescribed in subsection 3 of section 11-17-04. Fees for docketing, transcription, or other enforcement proceedings shall be as provided for judgments of the district court of any county of this state.

SECTION 10. AMENDMENT. Section 30.1-28-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.

1. The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian, limited or general. No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual habilitation plan team for the incapacitated person or any state employee in the performance of official duties.
2. Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own

* NOTE: Section 28-20-20 was also amended by section 13 of Senate Bill No. 2275, chapter 337.

- choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and shall also be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made. The visitor shall submit his report in writing to the court.
3. Where possible without undue delay and expense beyond the ability to pay of the allegedly incapacitated person or any other person paying costs, the court, in formulating the judgment, may utilize the service of any public or charitable agency or nonprofit corporation that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, and to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.
 4. The costs necessitated by hearings held pursuant to this chapter must be paid, in order of priority, by:
 - a. The incapacitated person, if in the discretion of the court, sufficient assets are available.
 - b. The spouse or parents of the incapacitated person if the court finds costs would not cause undue hardship.
 - c. The state through the department of human services.

SECTION 11. AMENDMENT. Section 32-37-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-37-05. Fees paid by petitioner - Filing copy of judgment. The petitioner, upon the filing of the petition, must pay to the clerk of the district court the sum of five dollars as a filing fee as prescribed in subsection 1 of section 11-17-04. The cost of the publication of the notice required by this chapter shall be paid by the petitioner. In the event that said judgment shall establish the date and place of birth of the petitioner, the clerk of the court shall certify a copy of such judgment and file the same with the

division of vital statistics, state department of health, Bismarck, North Dakota.

* SECTION 12. AMENDMENT. Section 35-18-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-18-04. Clerk of court - Filing - Record - Fee. The clerk of the district court with whom the lien statement and proof of service are filed shall endorse thereon the date and hour of filing and shall make an abstract thereof in a book kept for that purpose to be known as "the hospital lien book", which shall be indexed properly and shall contain the name of the hospital or institution filing the lien, the date and hour filed, the amount claimed, the name of the person or corporation against whom it is filed, the name of the person to whom such services are rendered and of any insurer of such injured person, and the number of the file where the original lien is kept. The clerk shall collect a fee of fifty cents as prescribed in subsection 3 of section 11-17-04 for filing and indexing each lien.

** SECTION 13. AMENDMENT. Section 35-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-21-05. Fee - Recordation - Certified copies as evidence. If the officer before whom such proceedings are had is the clerk of the district court, the clerk shall be entitled to charge a fee of not more than one dollar as prescribed in subsection 3 of section 11-17-04 to be paid in advance by the applicant. If the officer is the clerk of the district court, he shall record the notice, affidavit, and undertaking in the order book, and if the officer is the register of deeds, he shall record the same in his book of miscellaneous records. The register of deeds shall be entitled to charge a fee as provided by section 11-18-05. Certified copies of the documents shall be prima facie evidence, in the courts of this state, of the matters therein contained.

*** SECTION 14. AMENDMENT. Section 35-24-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-24-12. Recordation of statement of lien. Immediately upon receipt of the statement of lien mentioned in section 35-24-11, the clerk of the district court shall give such statement a file number and shall file the same and in addition shall enter a record of the same in a book kept by him for that purpose, to be called "Oil and Gas Lien Record", which shall be ruled off into separate columns with headings as follows: "File Number", "When Filed", "Name of Owner", "Name of Claimant", "Amount Claimed", "Description of", and "Remarks", and the clerk of the district court shall make the proper entries under each column. The fee to be charged by the clerk of the district court for the filing of such lien statement shall be one dollar as prescribed by subsection 3 of section 11-17-04.

SECTION 15. AMENDMENT. Section 43-01-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 35-18-04 was also amended by section 21 of Senate Bill No. 2275, chapter 337.
- ** NOTE: Section 35-21-05 was also amended by section 22 of Senate Bill No. 2275, chapter 337.
- *** NOTE: Section 35-24-12 was also amended by section 23 of Senate Bill No. 2275, chapter 337, and amended by section 2 of Senate Bill No. 2433, chapter 385.

43-01-19. County officers may certify abstracts. The provisions of this chapter shall not prevent the register of deeds, county treasurer, or clerk of court from certifying to abstracts of title to lands from the records of their respective offices. Each such officer, however, shall be liable on his official bond for the faithful performance of all acts performed by him as such abstracter. If the officer certifying the abstract is the clerk of court, the clerk shall charge and collect a fee as prescribed in subsection 4 of section 11-17-04.

SECTION 16. AMENDMENT. Section 43-20-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-04. License recorded - Fee. Every holder of a license as a dental hygienist in this state, within thirty days after its issuance, shall file the same for record in the office of the clerk of the district court in the county where the holder works. If said holder of the license changes the place of his employment to another county he shall file the license in the office of the clerk of the district court of such county before practicing therein. The clerk's fee for recording such license shall be fifty cents as prescribed in subsection 3 of section 11-17-04.

* SECTION 17. AMENDMENT. Section 44-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-06-03. Oath and bond of notary public - Approval of bond. Each notary public, before entering upon the duties of his office, shall take the oath prescribed for civil officers and give to the state a bond in the penal sum of five hundred dollars conditioned for the faithful discharge of the duties of his office. Such bond may be furnished by a surety or bonding company authorized to do business in this state or by one or more sureties, and shall be subject to approval as follows:

1. If it is a surety bond, it shall be subject to approval by the secretary of state, and such approval shall be without charge.
2. If it is a personal bond, it shall be subject to approval by the clerk of the district court of the county of which the notary public is a resident, or of the county to which such county is attached for judicial purposes. The clerk of district court shall charge and collect a fee as prescribed in subsection 4 of section 11-17-04 for such approval.

SECTION 18. AMENDMENT. Section 57-22-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-22-32. Collection from tax debtor who moves to another county - Duty of county auditor. Upon the removal of a delinquent tax debtor from the county, collection shall be made from ~~him~~ the debtor in the manner following:

- * NOTE: Section 44-06-03 was also amended by section 2 of House Bill No. 1381, chapter 499.

1. In case of the removal of any delinquent tax debtor from the county in which his the debtor's personal property was taxed to any other county in this state, it shall be the duty of the assessor immediately to make a proper effort to ascertain the place of his the debtor's destination and to report the same to the county auditor. Thereupon, the county auditor shall make out and forward to the clerk of the district court of the county to which the tax debtor has removed a statement of the amount of such delinquent taxes, including penalties and costs that may have attached, specifying the value of property on which said taxes were levied.

2. On receipt of any such statement, the clerk of the district court receiving the same shall issue his a warrant to the sheriff of his the county, and such sheriff shall proceed immediately to collect the same in the manner in which he the sheriff collects delinquent taxes in his own the county. He The sheriff shall collect from the tax debtor an additional twenty-five cents sum as prescribed in subsection 4 of section 11-17-04 for each warrant. Such sum shall be paid to such clerk as his the fee for issuing said warrant, and all taxes thus collected shall be remitted by him the sheriff to the treasurer of the county to which the taxes belong, together with the original statement of account, and if any taxes remain unpaid a statement shall be made of the reason therefor, and proper entries shall be made on the tax lists of the county where the tax was levied.

Approved April 4, 1985

CHAPTER 337

SENATE BILL NO. 2275
(Olson)

COURT CLERKS

AN ACT to amend and reenact sections 11-17-01, 11-17-05, 11-17-09, 15-29-10, subsection 2 of section 27-02-05.1, sections 27-07.1-12, 27-07.1-24, 27-08.1-06, 27-08.1-07, 28-20-12, 28-20-13, 28-20-16, 28-20-20, subsection 4 of section 28-20-21, sections 28-20-22, 28-20-25, 29-01-26, 32-28-02, 32-28-03, 35-15-05, 35-18-04, 35-21-05, 35-24-12, and 57-22-31 of the North Dakota Century Code, relating to the duties and recordkeeping functions of the clerks of district courts and clerks of county courts; and to repeal sections 28-20-10 and 28-20-19 of the North Dakota Century Code, relating to recordkeeping requirements of the clerks of district courts and the clerks of county courts.

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

SECTION 1. AMENDMENT. Section 11-17-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-01. Duties of the clerk of court. The Unless otherwise directed by rule of the supreme court, the clerk of the district court shall perform the following duties:

1. Take charge of all ~~books,~~ papers, and records, which are filed or deposited in ~~his~~ the office of the clerk of court, and safely keep and dispose of the same according to ~~law~~ supreme court rule.
2. Act as clerk of the district court, and attend ~~each session thereof,~~ attend the judge of the district court in chambers during sessions of the district court when requested to do so, and ~~act as clerk of county court~~ as required by law the judge.
3. Issue all process and notices required to be issued out of the district court.

4. Enter all judgments of the district court and record the same in the judgment book.
- 5- Keep in his the office a judgment docket in which he the clerk shall enter a record of all money judgments alphabetically the name of each judgment debtor, the amount of the judgment, and the precise time of its entry.
- 6- 5. Satisfy all liens and judgments docketed or on file in his the office immediately after a satisfaction thereof of the lien or judgment is filed therein.
- 7- 6. Keep in his the office a register of all actions, which must state the names of the attorneys, the amounts of all fees charged therein, in which the clerk shall enter the title of the each action with brief notes under it from time to time of all papers filed and proceedings had therein in the action together with the date of the filing or proceeding, and such other matters as are required by law supreme court rule.
- 8- 7. Keep for the district court in separate volumes an a plaintiff's and defendant's index of all suits labeled "General Index - Plaintiffs", each page of which shall be divided into seven columns, under their respective heads alphabetically arranged as follows: Number of Action; Plaintiffs; Defendants; Date of Judgment; Number of Judgment; Page of Entry of Judgment in Judgment Book; and Page of Minute Book of District Court.
- 9- Keep for the district court an index labeled "General Index - Defendants", each page of which shall be divided into seven columns as provided in subsection 8-
- 10- Keep a minute book which shall contain the daily proceedings of the district court and which shall be signed by the clerk. The minute book shall be indexed in the names of both plaintiffs and defendants.
- 11- Keep a properly indexed book labeled "Register of Criminal Actions" in which shall be entered the title and number of each criminal action with a memorandum of each paper filed or order or proceeding had therein together with the date thereof and the name of each witness called in each action; the number of days he is in attendance; and his legal fees.
- 12- Keep a book labeled "Book of Jurors' Certificates", in which shall be contained the blank certificates and stubs to be filled as provided by the laws of this state.
- 13- Keep a book labeled "Witness Book", in which shall be contained the blank certificates and stubs to be filled as provided in this code.

- ~~14-~~ 8. Keep a record of the attendance name of all jurors each juror in the district court, and of all witnesses in criminal actions the number of days in attendance, and compute the mileage of each.
9. Keep a record of the name of each witness called in each criminal action in the district court, the number of days in attendance, and the witness' legal fees.
- ~~15-~~ 10. Keep such other records and perform such other duties as are prescribed by law the supreme court directs by rule.

SECTION 2. AMENDMENT. Section 11-17-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-05. Clerk to keep fee book record of fees - Monthly report to county auditor. The clerk of the district court shall keep as a public record in his office a book to be provided by the county in which he shall enter of all money received by him as fees for services rendered as such clerk. Within three days after the close of each calendar month and also at the close of his the clerk's term of office, such the clerk shall file with the county auditor a statement under oath showing the amount of fees which he has received as such officer clerk since the date of his the clerk's last report, and within three days thereafter he the clerk shall deposit with the county treasurer the total sum of such fees, except such fees as he which the clerk is authorized expressly to retain.

SECTION 3. AMENDMENT. Section 11-17-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-09. Record made of files destroyed. At the time the files, shorthand notes, recorded testimony, or exhibits referred to in sections 11-17-08 and 11-17-10 are destroyed or transferred to the state archivist, the clerk of court shall make a record upon the entry in the register of actions or the docket of the judgment, indicating the removal and final disposition of the files, shorthand notes, recorded testimony, or exhibits and the date thereof of the action.

SECTION 4. AMENDMENT. Section 15-29-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-10. District records open to examination - Records as evidence. The records, books, vouchers, and papers of the district shall be are open to examination by any taxpayer of the district. Such These records, or a transcript thereof certified by the clerk, shall must be received in all courts as prima facie evidence of the facts therein set forth.

SECTION 5. AMENDMENT. Subsection 2 of section 27-02-05.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Administrative practice and procedure in all courts, including ~~the~~;
 - a. The required filing by all courts of all reports deemed necessary by the supreme court; and
 - b. The establishment of uniform standards and procedures for the effective management of court records.

All judges, clerks of court, and other officers or employees of the courts and of offices related to and serving the courts shall comply with all administrative practice and procedure rules promulgated by the supreme court.

SECTION 6. AMENDMENT. Section 27-07.1-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-12. Clerk to keep ~~fee book~~ record of fees - Monthly report to county auditor. The clerk of the county court shall keep as a public record ~~in his office a book, to be provided by the county, in which he shall enter of all money received by him as fees for services rendered as clerk.~~ Within three days after the close of each calendar month and also at the close of ~~his~~ the clerk's term of office, the clerk shall file a statement under oath with the county auditor showing the amount of fees ~~which he has received since the date of his the clerk's last report,~~ and within three days thereafter, ~~he the clerk shall deposit with the county treasurer the total sum of such fees, except such fees as he that the clerk is expressly authorized to retain.~~

SECTION 7. AMENDMENT. Section 27-07.1-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-24. Docketing judgment - Transcript to other counties - Lien on real property. On filing a judgment roll upon a judgment ~~which, in whole or in part, that~~ directs the payment of money, the clerk of the county court in which ~~such the~~ judgment was rendered shall docket the ~~same judgment in a book~~ separate record to be known as the "judgment docket". ~~Such The~~ judgment may be docketed in any other county upon filing with the clerk of the county court of ~~such the~~ county a transcript of the original judgment docket. The judgment ~~shall be~~ is a lien on all the real property, except the homestead, of every person against whom ~~any such the~~ judgment is rendered, which ~~he may have the person has~~ in any county in which ~~such the~~ judgment is docketed at the time of docketing or which ~~he the person thereafter shall acquire~~ acquires in ~~such the~~ county, for ten years from the time of docketing the ~~same judgment~~ in the county in which it was rendered. All provisions of law applicable to the district courts pertaining to the filing, docketing, or renewal of a judgment ~~shall~~ apply to county courts.

SECTION 8. AMENDMENT. Section 27-08.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 district county court under the provisions of chapter 28-21, and the execution ~~shall invoke~~ 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 district county court, along with an affidavit of identity signed by the judgment creditor. The abstract may be filed with the clerk of the district county court of the county in which the judgment was rendered without payment of a filing fee, and the clerk, thereupon, must shall enter the judgment in the judgment book and upon the judgment docket. From the time of the docketing, it becomes a judgment of the district county 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 district county 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 district county court where the judgment is filed.

* SECTION 9. AMENDMENT. Section 27-08.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-07. Records and destruction of records. Records Unless otherwise authorized by rules of the supreme court, records of the small claims court shall consist of all documents filed in each action and an index for plaintiffs and defendants. No other books, records, or papers need be kept. After Unless otherwise directed by rules of the supreme court, after the judgment is satisfied, or becomes ten years old, the court may destroy all papers filed in the case, except the judgment. At the time of destroying such the papers, the clerk of court shall make a record upon the margin or elsewhere on the judgment identifying the papers destroyed and the date thereof dates the papers were filed.

SECTION 10. AMENDMENT. Section 28-20-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-12. Judgment roll - Contents. Unless the party or his the party's attorney shall furnish furnishes a judgment roll, the clerk immediately after entering the judgment shall attach together and file the following papers, which shall constitute the judgment roll unless otherwise directed by rule of the supreme court:

1. In case cases when the complaint is not answered by any defendant, the summons and complaint or copies thereof,

* NOTE: Section 27-08.1-07 was also amended by section 3 of Senate Bill No. 2285, chapter 335.

the affidavit for service of summons by publication, if any, proof of service and proof that no answer has been received, the report, if any, and a copy of the judgment;

2. In all other cases, the summons, pleadings, or copies thereof, the verdict or decision, the report, if any, the offer of the defendant, a copy of the judgment, the statement of the case, if any, and all orders and papers in any way involving the merits and necessarily affecting the judgment; and
3. All instructions of the court to the jury, when filed with the clerk, the motion and notice of motion for a new trial, the specifications of errors of law and of insufficiency of the evidence, the order of the court granting or denying a new trial, together with the memorandum of ~~his~~ the judge's reasons, and the notice of appeal and undertaking thereon.

SECTION 11. AMENDMENT. Section 28-20-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-13. Docketing judgment - Transcript to other counties - Lien on real property. On filing a judgment roll upon a judgment ~~which, in whole or in part, that~~ directs the payment of money, the clerk of the district court in which ~~such the~~ judgment was rendered shall docket the ~~same judgment in a book separate record~~ to be known as the "judgment docket". ~~Such The~~ judgment may be docketed in any other county upon filing with the clerk of the district court of ~~such that~~ county a transcript of the original judgment docket. The judgment shall be is a lien on all the real property, except the homestead, of every person against whom ~~any such the~~ judgment is rendered, which ~~he the person~~ may have in any county in which ~~such the~~ judgment is docketed at the time of docketing or which ~~he the person~~ thereafter shall ~~acquire~~ acquires in ~~such the~~ county, for ten years from the time of docketing the ~~same judgment~~ in the county in which it was rendered. When a judgment shall be is docketed in a county to which unorganized territory is attached for judicial purposes, ~~it shall be the judgment is~~ a lien upon any real property of the judgment debtor situated in ~~such the~~ unorganized territory to the same extent as though the real property were situated in the organized county. If the unorganized territory thereafter is organized as a county, a transcript of the judgment docket shall ~~must~~ be filed in the office of the clerk of the district court of ~~such the~~ county within ninety days after the organization of the county, or it shall ~~cease~~ ceases to be a lien upon any real property ~~therein~~ in the county.

SECTION 12. AMENDMENT. Section 28-20-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-16. How judgment docketed. The Unless otherwise directed by rules of the supreme court, the clerk shall docket the judgment by entering alphabetically in the judgment docket the names of the

judgment ~~debtor or debtors~~, the names of the ~~party or parties~~ in whose favor the judgment was rendered, the sum recovered or directed to be paid in figures, the date of the judgment, the ~~year, day, hour, and exact time to the minute~~ when the judgment roll or transcript was filed, the ~~year, day, hour, and exact time to the minute~~ when the judgment was docketed in ~~his the clerk's office and the page in the judgment book where the same is entered~~, the name of the court in which the judgment was rendered, and the name of the ~~attorney or attorneys~~ for the party recovering the judgment. If there are two or more judgment debtors, ~~such the~~ entries must be repeated under the initial letter of ~~the each~~ surname of ~~each~~.

* SECTION 13. AMENDMENT. Section 28-20-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-20. Assignment of judgment to be entered ~~in upon the judgment book docket~~. Every clerk of the district court, upon the presentation ~~to him~~ of an assignment of any judgment rendered or docketed in ~~such the~~ court, signed by the party in whose favor the judgment is rendered, or by ~~his the party's~~ executor or administrator, and acknowledged in the manner prescribed by law for the acknowledgment of deeds, ~~must enter the same immediately in the judgment book and must shall~~ note the fact of ~~such the~~ assignment, the date thereof, and the name of the assignee, ~~in the margin of the entry of such judgment in such judgment book and also~~ upon the docket of ~~such the~~ judgment. ~~No filing fee may be charged or collected by the clerk of district court for entering an assignment of a judgment~~. The clerk of the district court of any other county where ~~such the~~ judgment is docketed ~~must shall~~ note the fact of ~~such the~~ assignment, the date thereof, and the name of the assignee, upon the presentation ~~to~~ and filing with ~~him that~~ clerk of a certified copy of the original judgment docket with the facts of ~~such the~~ assignment noted thereon.

SECTION 14. AMENDMENT. Subsection 4 of section 28-20-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The file number of the judgment book case in which entered and the page of the entry of the same county in which the judgment was originally entered;

SECTION 15. AMENDMENT. Section 28-20-22 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 ~~shall must~~ be filed with the clerk of the district court where ~~such 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

- * NOTE: Section 28-20-20 was also amended by section 8 of Senate Bill No. 2116, chapter 336.

shall enter the affidavit for renewal at length in the judgment book in the same manner and with the same effect as the original judgment, and he shall enter in his 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 wherein where the same judgment is filed, may be filed and docketed in any other county of the state in which a transcript of the original judgment was filed.

SECTION 16. AMENDMENT. Section 28-20-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-25. Discharge of record. Upon the return of an execution issued upon a judgment wholly that has been satisfied, or the presentation of a satisfaction duly executed, to the clerk of any district court, he the clerk shall immediately must note upon the judgment docket and in the margin of the judgment book where such judgment is entered, the date and manner of such the cancellation, and the manner thereof.

SECTION 17. AMENDMENT. Section 29-01-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-01-26. Duty of clerk or magistrate. The clerk, magistrate, or other person to whom property is delivered, as is provided in section 29-01-25, must enter in a suitable book shall record every amount of money and a description of every article of property taken from each person so arrested and must, attach a number to every amount of money and every article of property and make a corresponding entry thereof, but when the receipt and property, as provided in section 29-01-25, are delivered to a magistrate, it shall be sufficient. Sufficient compliance with the provisions of this section is met if the entries are made in his the docket of the magistrate after the receipt and property are delivered to a magistrate, as provided in section 29-01-25.

SECTION 18. AMENDMENT. Section 32-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-28-02. Change of name of person - Petition. Any person desiring to change his or her name may file a petition in the district court of the county in which such the person may be is a resident, setting forth:

1. That the petitioner has been a bona fide resident of such the county for at least six months prior to the filing of the petition.
2. The cause for which the change of the petitioner's name is sought.
3. The name asked for.

The judge of the district court, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition and, that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days' previous notice of the intended application has been given in some newspaper printed in such the district, shall order a change of the name of such the petitioner and direct that such order be entered by the clerk in the journal of the court. The court, however, may waive publication of the notice hereinbefore required when the proposed change relates only to a first or given name as distinguished from a surname.

* SECTION 19. AMENDMENT. Section 32-28-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-28-03. Change of name of city - Petition. Whenever it may be desirable to change the name of any city in any county of the this state, a petition for that purpose in like manner may be filed in the district court of the county in which such the city is situated, setting forth the reason why such for the change of name is desirable and the name asked to be substituted requested. The court may order such the change of name and direct the clerk to enter such order upon the journal of the court, on being satisfied by proof that:

1. That the prayer The request of the petitioners is just, proper, and reasonable.
2. That notice as in case of the change of names of persons Notice has been provided for as required in section 32-28-02 has been given.
3. That two-thirds Two-thirds of the legal voters qualified electors of such the city, as determined by the vote cast for the office of governor at the last gubernatorial election, have signed such petition expressing their desire that such change of name be granted.
4. That there There is no other city in the this state of with the requested name asked for.

SECTION 20. AMENDMENT. Section 35-15-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-15-05. Account filed with clerk - Recorded by clerk - Liens concurrent and paid pro rata. Any person entitled to a lien under this chapter shall make a verified account in writing of the items of labor and material furnished and, within sixty days from the time of completing the labor or furnishing the last item of materials, shall file the account in the office of the clerk of the district court of the county in which where the lode, lead, ledge, mine, deposit, bank, or tunnel for or upon which labor or material is furnished may be is situated. At the same time he The person shall file, with the account, a correct description of the property to be charged with

* NOTE: Section 32-28-03 was also amended by section 61 of House Bill No. 1059, chapter 235.

the lien. The account and description shall be recorded in a separate ~~book record and filing system~~ to be provided for that purpose by the clerk of court. Thereupon ~~such the~~ account shall ~~will~~ operate as a lien on the property charged in the description from the time of the completion of the work or furnishing the last item of material, and for one year thereafter. When labor has been performed or materials have been furnished under a written contract, the contract or a copy thereof shall ~~must~~ be filed with the account and description. All lien claims for labor performed or materials furnished shall ~~must~~ be concurrent liens upon the property charged and shall ~~must~~ be paid pro rata out of the proceeds arising from the sale thereof of the property, if the same shall be sold, or upon settlement without sale.

* SECTION 21. AMENDMENT. Section 35-18-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-18-04. Clerk of court - Filing - Record - Fee. The clerk of the district court with whom the lien statement and proof of service are filed shall endorse ~~thereon on those filings~~ the date and hour of filing and shall make an abstract thereof in a book kept for that purpose to be known as "the hospital lien book", which shall be indexed properly and shall contain the name of the hospital or institution filing the lien, the date and hour filed, the amount claimed, the name of the person or corporation against whom it is filed, the name of the person to whom such services are rendered and of any insurer of such injured person, and the number of the file where the original lien is kept ~~keep a record of all lien statements filed in the county, and of any orders, or responses relating to any orders, by the district court.~~ The clerk shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. The clerk shall collect a fee of fifty cents as prescribed in subsection 3 of section 11-17-04 for filing and indexing each lien.

** SECTION 22. AMENDMENT. Section 35-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-21-05. Fee - Recordation - Certified copies as evidence. If the ~~presiding officer before whom such proceedings are had~~ is the clerk of the district court, the clerk shall be entitled to ~~may~~ charge a fee of not more than one dollar as prescribed in subsection 3 of section 11-17-04 to be paid in advance by the applicant. If the officer is the clerk of the district court, ~~he the clerk~~ shall record the notice, affidavit, and undertaking in the ~~order book, and if a recording system provided for that purpose.~~ If the officer is the register of deeds, ~~he the officer~~ shall record the same in his book of miscellaneous records. The register of deeds shall be entitled to ~~may~~ charge a fee as provided by section 11-18-05. Certified copies of the documents shall ~~be~~ are prima facie evidence, in the courts of this state, of the matters therein contained.

* NOTE: Section 35-18-04 was also amended by section 12 of Senate Bill No. 2116, chapter 336.

** NOTE: Section 35-21-05 was also amended by section 13 of Senate Bill No. 2116, chapter 336.

* SECTION 23. AMENDMENT. Section 35-24-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-24-12. Recordation of statement of lien. Immediately upon receipt of the statement of lien mentioned provided for in section 35-24-11, the clerk of the district court shall give such statement a file number and shall file the same and in addition shall enter a record of the same in a book kept by him for that purpose, to be called "Oil and Gas Lien Record", which shall be ruled off into separate columns with headings as follows: "File Number", "When Filed", "Name of Owner", "Name of Claimant", "Amount Claimed", "Description of", and "Remarks", and the clerk of the district court shall make the proper entries under each column keep a record of all lien statements filed in the county, and of any orders or responses relating to orders by the district court. The clerk shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. The fee to be charged by the clerk of the district court for the filing of such a lien statement shall be one dollar is as prescribed by subsection 3 of section 11-17-04.

SECTION 24. AMENDMENT. Section 57-22-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-22-31. Payment of taxes after judgment. Upon payment to the county treasurer of any personal property taxes for which judgment has been obtained, the treasurer shall deliver a certificate of the fact of payment to the clerk of the court, who. The clerk shall satisfy file the certificate and enter the satisfaction of the judgment upon the margin of the record thereof in the judgment docket, stating the date of payment and the number of the receipt given therefor, and shall file such certificate.

SECTION 25. REPEAL. Sections 28-20-10 of the North Dakota Century Code and 28-20-19 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1985

* NOTE: Section 35-24-12 was also amended by section 14 of Senate Bill No. 2116, chapter 336, and amended by section 2 of Senate Bill No. 2433, chapter 385.

CHAPTER 338

SENATE BILL NO. 2118
(Committee on Judiciary)
(At the request of the Supreme Court)

COUNTY COURT JURISDICTION

AN ACT to amend and reenact subsection 8 of section 27-07.1-17 of the North Dakota Century Code, relating to the jurisdiction of county courts.

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

* SECTION 1. AMENDMENT. Subsection 8 of section 27-07.1-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Any other cases, ~~except proceedings conducted pursuant to chapter 27-20,~~ as assigned by the presiding district judge of the judicial district in which the county is located; provided, however, that any party is entitled to have any matter assigned pursuant to this subsection heard by a district judge if a written request therefor is filed with the presiding district judge within three days after receiving notice of the assignment, and, provided further, that the trial of a criminal matter may not be assigned to a county judge who presided at the preliminary hearing except where a preliminary hearing has been waived.

Approved March 22, 1985

- * NOTE: Section 27-07.1-17 was also amended by section 31 of House Bill No. 1070, chapter 272.

CHAPTER 339

HOUSE BILL NO. 1268
(Representatives Wald, Goetz)
(Senator Waldera)

COMMISSION ON JUDICIAL CONDUCT

AN ACT to amend and reenact sections 27-07.1-34, 27-23-01, 27-23-02, and 40-18-22 of the North Dakota Century Code, relating to changing the name of the commission on judicial qualifications to the commission on judicial conduct.

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

SECTION 1. AMENDMENT. Section 27-07.1-34 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-34. Continuing education of judge of county court required. Each judge of a county court shall be required, within one year after his election, and at least once each calendar year thereafter, to attend and participate in an educational session designated for that purpose by the supreme court, unless the judge is excused from such attendance by the supreme court. If any such judge shall fail to attend an educational session within any calendar year, without being excused therefrom by the supreme court, the state court administrator shall report such fact to the commission on judicial ~~qualifications~~ conduct for such action as it deems appropriate.

SECTION 2. AMENDMENT. Section 27-23-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-23-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the commission on judicial ~~qualifications~~ conduct.
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.

3. "Chairman" means the chairman of the commission and includes any acting chairman.
4. "Master" means one or more judges, active or retired, or attorneys appointed by the supreme court upon the request of the commission; or one or more members of the commission designated by the commission to hold hearings and make findings of fact on issues of fact arising in proceedings under this chapter.
5. "Counsel" means one or more attorneys appointed by the commission to gather and present evidence and act on its behalf in proceedings before a master or the commission or in the supreme court.
6. "Shall" is mandatory, but not jurisdictional, and "may" is permissive.

SECTION 3. AMENDMENT. Section 27-23-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-23-02. Creation and composition of commission, terms of office, appointment, and powers. A The commission on judicial ~~qualifications~~ conduct is hereby created to consist of one judge 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 shall be appointed by their respective state associations 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 4. AMENDMENT. Section 40-18-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-22. Continuing education of municipal judge required. Each municipal judge shall be required, within one year after his election, and at least once each calendar year thereafter, to attend and participate in an educational session designated for that

purpose by the supreme court, unless the judge is excused from such attendance by the supreme court. Such judge shall be reimbursed for his necessary expenses of travel and subsistence as other city officials are so reimbursed.

If any such judge shall fail to attend such educational session within any calendar year, without being excused therefrom by the supreme court, the state court administrator shall report such fact to the commission on judicial ~~qualifications~~ conduct for such action as it deems appropriate.

Approved March 14, 1985

CHAPTER 340

HOUSE BILL NO. 1588
(Representative Koland)
(Senator Kilander)

SMALL CLAIMS COURT JURISDICTION AND VENUE

AN ACT to amend and reenact sections 27-08.1-01 and 27-08.1-03 of the North Dakota Century Code, relating to the jurisdictional limits and venue of small claims courts.

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

* SECTION 1. AMENDMENT. Section 27-08.1-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-01. Small claims court - Jurisdictional limits - ~~Effective date~~
Venue.

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 shall be 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 one two thousand five hundred dollars.
2. The proceedings in this court shall be commenced ~~in the county of the defendant's residence, if the defendant is a natural person; if the defendant is a corporation or a partnership, the proceedings shall be commenced in any county in which the defendant has a place of business or in any county in which the subject matter of the claim arose-;~~
 - a. If the defendant is a corporation or a partnership, in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred.

* NOTE: Section 27-08.1-01 was also amended by section 40 of Senate Bill No. 2086, chapter 82.

- b. If the claim is for collection of a check written without sufficient funds or without an account, in the county where the check was passed, or in the county of the defendant's residence or place of business.
- c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended:
- (1) In the county of the defendant's residence or place of business; or
- (2) If the amount of the claim is less than five hundred dollars and is not from a telephone or mail order transaction, in the county where the transaction occurred or in the county of the defendant's residence or place of business.
- d. If the defendant is an individual and the claim is not made under subdivision b or c, in the county of the defendant's residence.
3. The defendant may elect to remove the action to a small claims court in the defendant's county of residence. No claim shall be filed by an assignee of that claim. No garnishment or attachment shall issue from this court. Actions commencing in the small claims court shall only be those in which the cause of action has accrued on or after January 17, 1971.

* SECTION 2. AMENDMENT. Section 27-08.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 ~~one~~ two thousand ~~five~~ hundred dollars, which shall be delivered to the plaintiff in person 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 shall not apply to counterclaims in excess of ~~one~~ two thousand ~~five~~ hundred 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

* NOTE: Section 27-08.1-03 was also amended by section 7 of Senate Bill No. 2116, chapter 336.

debtor, at the hearing, as would be made under the provisions of 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 of five dollars shall be charged for filing the claim affidavit, or counterclaim affidavit, plus one dollar for each defendant served.

Approved April 15, 1985

CHAPTER 341

HOUSE BILL NO. 1295
(Representatives Oban, Conmy)
(Senators Heinrich, Stenehjem)

JURY DISCRIMINATION PROHIBITION

AN ACT to amend and reenact section 27-09.1-02, subsection 1 of section 27-09.1-07, and subsection 2 of section 27-09.1-08 of the North Dakota Century Code, relating to disqualification from jury service by physical disability or inability to communicate and understand English given reasonable accommodations.

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

SECTION 1. AMENDMENT. Section 27-09.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-09.1-02. Discrimination prohibited. A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, physical disability, or economic status.

SECTION 2. AMENDMENT. Subsection 1 of section 27-09.1-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 prospective juror whose name is drawn from the master jury wheel a juror 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 court as to matters of form and shall

elicit the name, address of residence, and age of the prospective juror and whether ~~he~~ the prospective juror:

- a. Is a citizen of the United States and a resident of the county;
- b. Is able with reasonable accommodation to ~~read, speak,~~ communicate and understand the English language;
- c. Has any physical or mental disability impairing his 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 responses are true to the best of his knowledge and his 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 and shall indicate that he has done so 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 within ten days after its second receipt.

SECTION 3. AMENDMENT. Subsection 2 of section 27-09.1-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A prospective juror is disqualified to serve on a jury if ~~he~~ the prospective juror:
 - a. Is not a citizen of the United States and a resident of the state and county;
 - b. Is not at least eighteen years old;
 - c. Is unable with reasonable accommodation to ~~read,~~ speak, communicate and understand the English language;
 - d. Is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the

disability, and the certifying physician is subject to inquiry by the court at its discretion; or

- e. Has lost the right to vote because of imprisonment in the penitentiary (section 12.1-33-01) or conviction of a criminal offense which by special provision of law disqualified him for such service.

Approved April 4, 1985

CHAPTER 342

SENATE BILL NO. 2452
(Maixner)

ATTORNEY SUSPENSION OR REVOCATION

AN ACT to amend and reenact section 27-14-02 of the North Dakota Century Code, relating to causes for suspension or revocation of a certificate of admission to the bar.

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

SECTION 1. AMENDMENT. Section 27-14-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-14-02. Causes for suspension or revocation of certificate of admission to bar. The certificate of admission to the bar of this state of an attorney and counselor at law may be revoked or suspended by the supreme court if he has:

1. Committed an offense determined by the supreme court to have a direct bearing upon a person's ability to serve the public as an attorney and counselor at law, or the supreme court determines, following conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1;
2. Willfully disobeyed or violated an order of the court requiring him to do or to refrain from doing an act connected with or in the course of his professional practice;
3. Willfully violated any of the duties of an attorney or counselor at law;
4. Engaged, while attorney general or assistant attorney general of this state, or while employed in the office of the attorney general, in the private practice of the law, or rendered to any person, for pay, profit, and remuneration, any legal services other than those required in performing the duties imposed upon him by virtue of the duties of his office, but an assistant attorney general may finish any case, proceeding, or legal business in which he was engaged at the time of his appointment, and

an attorney general or assistant attorney general with the permission of the attorney general may voluntarily represent indigent clients referred by an organized pro bono program in addition to the regular duties of his office; such pro bono representation must be at no cost to the state of North Dakota;

5. Appeared, while state's attorney or assistant state's attorney of any county of this state or while an employee in the office of the state's attorney, as an attorney for the defense in any criminal action which it was his duty to prosecute;
6. Been convicted of any offense mentioned in section 27-13-08, ~~section~~ 27-13-09, ~~section~~ 27-13-11, or ~~section~~ 27-13-12; or
7. Committed any other act which tends to bring reproach upon the legal profession. The enumeration of certain grounds for disbarment or suspension of attorneys at law shall not be deemed a limitation upon the general powers of the supreme court to suspend or disbar for professional misconduct.

Approved March 28, 1985

CHAPTER 343

HOUSE BILL NO. 1341
(Representative Unhjem)
(Senator Stenehjem)

JUVENILE COURTS — DEPRIVED CHILD

AN ACT to create and enact a new subdivision to subsection 5 of section 27-20-02 of the North Dakota Century Code, relating to the definition of "deprived child"; and to amend and reenact subdivision h of subsection 1 of section 27-20-06, subsection 1 of section 27-20-13, subdivision a of subsection 1 of section 27-20-15, section 27-20-16, subsections 1 and 2 of section 27-20-17, and subsection 1 of section 27-20-22 of the North Dakota Century Code, relating to juvenile courts and detention and shelter care children.

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

SECTION 1. A new subdivision to subsection 5 of section 27-20-02 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent.

* SECTION 2. AMENDMENT. Subdivision h of subsection 1 of section 27-20-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- h. Make such temporary order not to exceed thirty days for the custody and control of a deprived child as he may deem appropriate alleged to be deprived as may be deemed appropriate. Such an order shall be reduced to writing within twenty-four hours.

* NOTE: Section 27-20-06 was also amended by section 4 of House Bill No. 1586, chapter 334.

SECTION 3. AMENDMENT. Subsection 1 of section 27-20-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A child may be taken into custody:
 - a. Pursuant to an order of the court under this chapter;
 - b. Pursuant to the laws of arrest;
 - c. ~~By a law enforcement officer or a juvenile supervisor, or by order of the juvenile supervisor made pursuant to subdivision h of subsection 1 of section 27-20-06,~~ if there are reasonable grounds to believe (1) that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary, or (2) that the child has run away from his parents, guardian, or other custodian; or
 - d. By order of the juvenile supervisor made pursuant to subdivision h of subsection 1 of section 27-20-06.

~~An order of the juvenile supervisor made pursuant to this subsection shall be reduced to writing within twenty-four hours of its issuance.~~

SECTION 4. AMENDMENT. Subdivision a of subsection 1 of section 27-20-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. Release the child to his parent, guardian, ~~or other custodian, or other responsible adult able and willing to assume custody of the child,~~ upon his promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under section 27-20-14; or

SECTION 5. AMENDMENT. Section 27-20-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-16. Place of detention.

1. A child alleged to be delinquent or unruly may be detained only in:
 - a. A licensed foster home or a home approved by the court;
 - b. A facility operated by a licensed child welfare agency;

- c. A detention home or center for delinquent or unruly children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court; ~~or~~
 - d. Any other suitable place or facility, including a medical facility for the treatment of mental illness, alcoholism, or drug addiction, designated ~~or operated~~ by the court. ~~The child may be detained in a jail or other facility for the detention of adults only if the facility in subdivision e is not available; the detention is in a room separate and removed from those for adults; it appears to the satisfaction of the court or the juvenile supervisor that public safety and protection reasonably require detention; and it is so ordered; or~~
 - e. A jail or other facility for the detention of adults only if the facility in subdivision c is not available, the detention is in a room separate and removed from those for adults, it appears to the satisfaction of the court or the juvenile supervisor, intake officer, or other authorized officer of the court, that public safety and protection reasonably require detention, and it is so authorized.
2. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be a child is received at the facility and shall bring him before the court upon request or deliver him to a detention or shelter care facility designated by the court.
 3. If a case is transferred to another court for criminal prosecution the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime.
 4. A child alleged to be deprived may be placed in shelter care only in the facilities stated in subdivisions a, b, and d of subsection 1 and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent or unruly.
 5. Effective July 1, 1987, a child alleged to be unruly may be detained in the facilities listed in subdivisions a, b, c, and d of subsection 1.

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 27-20-17 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the juvenile supervisor, the intake officer, or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that his detention or shelter care is warranted or required under section 27-20-14.
2. If he is not so released, a petition under section 27-20-21 shall be promptly made and presented to the court. An ~~informal~~ A judge or referee shall hold a detention or shelter care hearing shall be held promptly and not later than ninety-six hours after he the child is placed in detention or shelter care to determine whether there is probable cause to believe the child has committed the delinquent or unruly acts alleged, or the child is deprived and whether his detention or shelter care is required under section 27-20-14. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the detention or shelter care hearing shall be given to the child and if they can be found, to his parents, guardian, or other custodian. Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to appointed counsel if they are needy persons, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

SECTION 7. AMENDMENT. Subsection 1 of section 27-20-22 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. After the petition has been filed, the court shall fix a time for hearing thereon, which shall not be later than thirty days after the filing of the petition. If the child is in detention, the time for the hearing shall not be later than ~~ten days after the filing of the petition~~ fourteen days after the child has been taken into custody. The court may extend the time for hearing for good cause shown. The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the child if he is fourteen or more years of age or is alleged to be a delinquent or unruly child. A copy of the petition shall accompany the summons unless the summons is served by publication in which case the published summons shall indicate the general nature of the allegations and where a copy of the petition can be obtained.

Approved March 31, 1985

JUDICIAL PROCEDURE, CIVIL

CHAPTER 344

HOUSE BILL NO. 1510
(Representatives Hoffner, Shaw)
(Senator Ingstad)

STATUTE OF LIMITATIONS IN ASBESTOS INJURIES

AN ACT to amend and reenact section 28-01.1-02 of the North Dakota Century Code, relating to the statute of limitations for the recovery of damages for injury to property caused by products containing asbestos; and to declare an emergency.

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

* SECTION 1. AMENDMENT. Section 28-01.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01.1-02. Statute of limitation.

1. There shall be no recovery of damages for personal injury, death, or damage to property caused by a defective product, except as provided in ~~subsection~~ subsections 4 and 5, unless the injury, death, or damage occurred within ten years of the date of initial purchase for use or consumption, or within eleven years of the date of manufacture of a product, where that action is based upon, or arises out of, any of the following:
 - a. Breach of any implied warranties.
 - b. Defects in design, inspection, testing, or manufacture.
 - c. Failure to warn.
 - d. Failure to properly instruct in the use of a product.
2. The provisions of this section shall apply to all persons, regardless of minority or other legal disability, but shall not apply to any cause of action where the personal injury, death, or damage to property occurs within two years after July 1, 1979.

* NOTE: Section 28-01.1-02 was also amended by section 65 of Senate Bill No. 2086, chapter 82.

3. If a manufacturer, wholesaler, or retailer issues a recall of a product in any state, modifies a product, or becomes aware of any defect in a product at any time, and fails to notify or warn a user of the product who is subsequently injured or damaged as a result of the defect, the provisions of subsection 1 shall not bar any action against the manufacturer, wholesaler, or retailer based upon, or arising out of, the defect.
4. Any action to recover damages based on injury allegedly resulting from exposure to asbestos composed of chrysotile, amosite, crocidolite, tremolite, anthrophyllite, actinolite, or any combination thereof, shall be commenced within three years after the injured person has been informed of discovery of the injury by competent medical authority and that such injury was caused by exposure to asbestos as described herein, or within three years after the discovery of facts which would reasonably lead to such discovery, whichever is earlier. No action commenced under this subsection based on the doctrine of strict liability in tort shall be commenced or maintained against any seller of a product which is alleged to contain or possess a defective condition unreasonably dangerous to the buyer, user, or consumer unless such seller is also the manufacturer of such product or the manufacturer of the part thereof claimed to be defective. Nothing in this subsection shall be construed to permit an action to be brought based on an injury described in this subsection discovered more than two years prior to July 1, 1983.
5. Any action to recover damages based on injury to property allegedly resulting from the presence of products containing asbestos fibers of any type must be commenced within six years of the date upon which the owner of that property knew or should have known of facts giving rise to the cause of action.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 27, 1985

CHAPTER 345

HOUSE BILL NO. 1150
(Committee on Judiciary)
(At the request of the Commission on Uniform State Laws)

UNIFORM CONFLICT OF LAWS-LIMITATIONS ACT

AN ACT to adopt the Uniform Conflict of Laws-Limitations Act, relating to statute of limitation periods with regard to claims based on another state's law.

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

SECTION 1. Definition of terms. As used in this Act, unless the context otherwise requires:

1. "Claim" means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute.
2. "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them.

SECTION 2. Conflict of laws - Limitation period.

1. Except as provided by section 4, if a claim is substantively based upon:
 - a. The law of one other state, the limitation period of that state applies; or
 - b. The law of more than one state, the limitation period of one of those states chosen by the law of conflict of laws of this state, applies.
2. The limitation period of this state applies to all other claims.

SECTION 3. Rules applicable to computation of limitation period. If the statute of limitations of another state applies to the assertion of a claim in this state, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing

the limitation period, but its statutes and other rules of law governing conflict of laws do not apply.

SECTION 4. Unfairness. If the court determines that the limitation period of another state applicable under sections 2 and 3 is substantially different from the limitation period of this state and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this state applies.

SECTION 5. Existing and future claims. This Act applies to claims:

1. Accruing after June 30, 1985; or
2. Asserted in a civil action or proceeding more than one year after June 30, 1985, but it does not revive a claim barred before July 1, 1985.

Approved March 14, 1985

CHAPTER 346

SENATE BILL NO. 2260
(Stenehjem, Olson)

JURY SIZE

AN ACT to amend and reenact sections 28-14-03.1 and 29-17-12 of the North Dakota Century Code, relating to the size of juries in civil and criminal cases.

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

SECTION 1. AMENDMENT. Section 28-14-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-14-03.1. Size of juries in civil cases. In all civil actions when a jury is impaneled, a jury shall consist of six qualified jurors unless any party makes a timely written demand for a jury of ~~twelve~~ nine.

SECTION 2. AMENDMENT. Section 29-17-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-17-12. Number of jurors - How sworn. In all felony and class A misdemeanor cases when a jury is impaneled, a jury shall consist of twelve ~~six~~ qualified jurors, and in unless the defendant makes a timely written demand for a jury of twelve. In all other misdemeanor cases when a jury is impaneled, a jury shall consist of six qualified jurors unless any party makes a timely written demand for a jury of twelve. Jurors shall be sworn or affirmed well and truly to try and true deliverance make between the state of North Dakota and the defendant whom they shall have in charge, and a true verdict to give according to the evidence, and such verdict must be unanimous.

Approved April 11, 1985

CHAPTER 347

HOUSE BILL NO. 1431
(Larson)

EXECUTION LEVY PROCEDURES

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, providing a penalty for withholding property that has been levied upon; to amend and reenact sections 28-21-06, 28-21-07, 28-21-08, 28-21-10, 28-21-11, 28-21-18, and 28-23-10 of the North Dakota Century Code, relating to execution and sales under execution; and to repeal section 28-21-16 of the North Dakota Century Code, relating to the sheriff's jury.

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

SECTION 1. AMENDMENT. Section 28-21-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-06. Issue and contents of execution. The writ of execution must be issued in the name of the state of North Dakota, attested in the name of the judge, sealed with the seal of the court and subscribed by the clerk, and directed and delivered to the sheriff, or to the coroner when the sheriff is a party or interested. It must refer intelligibly to the judgment, stating the court, the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, and the amount actually due thereon with interest computed by the clerk issuing the execution, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

1. If it is against the property of the judgment debtor, to satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of such debtor, and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county or at any time thereafter;
2. If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, or tenants of real property or trustees, to satisfy the judgment out of such property; and

3. If it is for the delivery of the possession of real or personal property, to deliver the possession of the same, particularly describing it, to the party entitled thereto, and at the same time may require the officer to satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed or at any time thereafter, and in that respect shall be deemed an execution against property.

SECTION 2. AMENDMENT. Section 28-21-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-07. Time of return. The execution shall be returnable to the clerk with whom the record of the judgment is filed within sixty days after its receipt by the officer; except in the case when a sheriff's levy has been made within the sixty days, in which case the execution must be returnable to the clerk within a reasonable time following the completion of the sale of the property or ninety days after its receipt by the officer.

SECTION 3. AMENDMENT. Section 28-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-08. Property subject to ~~execution~~ levy - Manner of levy. All goods, chattels, moneys, and other property, both real and personal, or any interest therein, of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action are subject to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, and any interest in real or personal property, and all other property not capable of manual delivery, may be taken on execution and sold as provided in this chapter. ~~The levy of~~ under an execution shall be made ~~in the same manner as a levy under a warrant of attachment~~ as follows:

1. Upon real property, the sheriff shall file with the register of deeds of the county in which the property is located, a notice of levy that has been signed by the sheriff and that states the names of the parties to the action and a description of the property.
2. On personal property capable of manual delivery, the sheriff shall take the property into custody. When taking the property, the sheriff shall deliver a copy of the execution and notice of levy to the person from whom the property was taken.

- 3. Upon money, judgments, drafts, promissory notes, or other papers of like character, by serving a copy of the execution and levy to the person who has custody of such property except as may be provided for in chapter 32-09.1.
- 4. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy under an execution with the person holding the property or, if the property consists of a right or share in the stock of a corporation or interest or profits thereon, with the president or other head of the corporation, or the secretary, cashier, or managing agent thereof.

The sheriff may elect not to seize property during the time period the debtor has to claim exemptions under chapter 28-22 or in the case of property which by reason of its bulk or other cause cannot be removed immediately and upon service of the notice of levy in accordance with this section and section 28-21-12, the levy is as valid and effectual as if the property had been seized and the possession and control thereof retained by the officer. The lien of the writ of execution is effectual from the time the actual levy is made in accordance with this section and section 28-21-12.

SECTION 4. AMENDMENT. Section 28-21-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-10. **Officer's proceedings on execution.** When an execution is delivered to any officer, he must endorse thereon the day and hour when he received it and must proceed to execute the same with diligence. If executed, an exact description of the property sold at length with the date of the levy, sale, or other act done by virtue thereof including all costs incurred must be endorsed upon or appended to the execution, and if the writ was not executed or was, it shall be returned wholly unsatisfied with all costs incurred endorsed upon or appended to the execution. If the writ was executed in part only, the reason along with all costs in such case must be stated in the return. if no personal property is found, an endorsement to that effect must be made on the writ before levy is made on real property.

SECTION 5. AMENDMENT. Section 28-21-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-11. **Levy and sale.** The officer must execute the writ by levying on the property of the judgment debtor, ~~collecting the things in action by suit in his own name, if necessary,~~ or by selling the same, selling the other property, and paying to the plaintiff judgment creditor the proceeds, or so much thereof as will satisfy the execution.

SECTION 6. AMENDMENT. Section 28-21-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-18. Return of writ by mail. When execution shall be issued in any county and directed and delivered to the sheriff or coroner of another county, such sheriff or coroner having the execution after having discharged all the duties required of him by law shall enclose such execution by mail to the clerk who issued the same. On proof being made by such sheriff or coroner that the execution was mailed soon enough to have reached the said clerk within the time prescribed by law prior to its expiration, the sheriff or coroner shall not be liable for any amercement or penalty if it does not reach the office in due time. ~~However, no sheriff shall forward by mail any money made on any execution unless he shall be instructed specially to do so by the judgment creditor or his agent or attorney of record.~~

SECTION 7. AMENDMENT. Section 28-23-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-23-10. Sale after sixty ninety days - Abandonment of levy. In case of the failure of the sale by reason of irregularities in giving notice thereof, or of its postponement, the property may be sold upon proper notice by virtue of the execution after the expiration of the sixty ninety days allowed for the return thereof, and the officer in his return shall set forth the facts regarding such failure or postponement, or the judgment creditor, in writing filed with the clerk, may abandon such levy upon paying the costs thereof, in which case execution may issue with the same effect as if none had been issued.

SECTION 8. A new section to chapter 28-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any person who has received notice of levy in accordance with this chapter and fails to surrender and deliver such property levied on under section 28-21-08 upon demand of the sheriff is guilty of a class B misdemeanor and may be subject to civil contempt of court.

SECTION 9. REPEAL. Section 28-21-16 of the North Dakota Century Code is hereby repealed.

Approved March 29, 1985

CHAPTER 348

HOUSE BILL NO. 1285
(Kretschmar)

SHERIFF'S LEVY ON PERSONAL PROPERTY

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, relating to levy on personal property.

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

SECTION 1. A new section to chapter 28-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Levy with certified copy of judgment. A sheriff may levy upon a person's personal property upon receipt of a certified copy of judgment against the person, which has been docketed in any county, and proper notice has been given to the debtor requiring payment of money or the delivery of personal property. The party in whose favor the judgment was entered may proceed to enforce the judgment by execution as provided in this chapter.

Approved March 31, 1985

CHAPTER 349

HOUSE BILL NO. 1493
(Kretschmar)

PROPERTY EXEMPT FROM PROCESS

AN ACT to amend and reenact sections 28-22-03 and 28-22-03.1 of the North Dakota Century Code, relating to property exempt from all process.

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

SECTION 1. AMENDMENT. Section 28-22-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03. Additional absolute exemption for head of a family. In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by his agent, may select from his other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of five thousand dollars, which also shall be exempt from all attachment or mesne process, levy and sale upon execution, and any other final process issued from any court.

* SECTION 2. AMENDMENT. Section 28-22-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 herein 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. Accrued dividend, interest, or cash value of an unmatured life insurance policy not to exceed four thousand dollars.

* NOTE: Section 28-22-03.1 was also amended by section 1 of Senate Bill No. 2435, chapter 350.

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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.

Approved April 4, 1985

CHAPTER 350

SENATE BILL NO. 2435
(Lashkowitz, Redlin)

BENEFITS EXEMPT FROM PROCESS

AN ACT to amend and reenact section 28-22-03.1, subsection 3 of section 32-09.1-01, and section 32-09.1-09 of the North Dakota Century Code, relating to an exemption of social security benefits and veterans' disability pensions benefits from attachment, execution, and garnishment actions.

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

* SECTION 1. AMENDMENT. Section 28-22-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03.1. Additional exemptions for residents. In addition to the exemptions provided herein, 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. Accrued dividend, interest, or cash value of an unmatured life insurance policy not to exceed four thousand dollars.
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

* NOTE: Section 28-22-03.1 was also amended by section 2 of House Bill No. 1493, chapter 349.

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.

SECTION 2. AMENDMENT. Subsection 3 of section 32-09.1-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to 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.

SECTION 3. AMENDMENT. Section 32-09.1-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 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) In ----- Court
) ss.
 County of -----) -----

 Plaintiff
 vs.

 Defendant
 and Garnishment Disclosure

 Garnishee

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 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 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.

- 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), 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 the 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 and addresses of the persons and the nature of their claim, if known. (Any assignment of wages made by the defendant within ten days prior to 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), 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 March 31, 1985

CHAPTER 351

SENATE BILL NO. 2432
(Senator Waldera)
(Representatives Goetz, Wald)

DEBTOR'S WAGE EXEMPTION RESTRICTION

AN ACT to create and enact a new section to chapter 28-22 of the North Dakota Century Code, relating to a restriction on the exemption of a debtor's wages.

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

SECTION 1. A new section to chapter 28-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

Wages - Exemption restricted. The wages of a debtor are exempt from all process or levy only to the extent provided in section 32-09.1-03.

Approved April 15, 1985

CHAPTER 352

HOUSE BILL NO. 1571
(Hedstrom, Dorso)

FRIVOLOUS LAWSUITS — SLANDER OF TITLE

AN ACT to amend and reenact sections 28-26-31 and 47-19.1-09 of the North Dakota Century Code, relating to filing of frivolous lawsuits, awards of attorneys' fees, slander of title, and soliciting obstruction of judicial proceedings; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 28-26-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-26-31. Pleadings not made in good faith. Allegations and denials in any pleadings in court, made without reasonable cause and not in good faith, and found to be untrue, shall subject the party pleading them to the payment of ~~reasonable~~ all expenses, actually incurred by the other party by reason of the untrue pleading, ~~together with~~ including a reasonable attorney's fee, to be summarily taxed by the court at the trial or upon dismissal of the action.

SECTION 2. AMENDMENT. Section 47-19.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-19.1-09. Slanderous notice - Penalty. No person shall use the privilege of filing notices ~~hereunder under this chapter or recording any instrument affecting title to real property~~ for the purpose of slandering the title to real estate or to harass the owner of the real estate and in any action brought for the purpose of quieting title to real estate, if the court shall find that any person has filed a claim for the purpose ~~only~~ of slandering title to such real estate or to harass the owner of the real estate, the court shall award the plaintiff all the costs of such action, including attorney fees to be fixed and allowed to the plaintiff by the court, and all damages that plaintiff may have sustained as the result of such notice of claim having been filed for record or the instrument having been recorded.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 29, 1985

CHAPTER 353

SENATE BILL NO. 2215
(Committee on State and Federal Government)
(At the request of the Industrial Commission)

HOUSING FINANCE NOT ADMINISTRATIVE AGENCY

AN ACT to amend and reenact subdivision 1 of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to exempting the North Dakota housing finance agency from the provisions of the Administrative Practices Act.

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

SECTION 1. AMENDMENT. Subdivision 1 of subsection 1 of section 28-32-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, and the North Dakota mill and elevator association.

Approved March 22, 1985

CHAPTER 354

HOUSE BILL NO. 1042
(Legislative Council)
(Interim Administrative Rules Committee)

ADMINISTRATIVE CODE DISTRIBUTION

AN ACT to amend and reenact subdivision k of subsection 1 of section 28-32-03.2 of the North Dakota Century Code, relating to the distribution of the North Dakota Administrative Code.

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

SECTION 1. AMENDMENT. Subdivision k of subsection 1 of section 28-32-03.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- k. ~~North Dakota legislative~~ Legislative council, ~~two~~ four copies.

Approved March 1, 1985

CHAPTER 355

HOUSE BILL NO. 1162
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

WORKMEN'S COMPENSATION REHEARING

AN ACT to amend and reenact section 28-32-14 of the North Dakota Century Code, relating to lengthening the period for petitioning for a rehearing before the North Dakota workmen's compensation bureau.

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

SECTION 1. AMENDMENT. Section 28-32-14 of the North Dakota Century Code is hereby amended and reenacted to read 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 workmen's compensation bureau may have thirty days within which to request a rehearing. He 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.

Approved March 14, 1985

CHAPTER 356

SENATE BILL NO. 2131
(Committee on State and Federal Government)
(At the request of the Public Service Commission)

APPEAL FROM AGENCY DECISION

AN ACT to amend and reenact sections 28-32-15 and 28-32-21 of the North Dakota Century Code, relating to appeals from decisions of an administrative agency.

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

SECTION 1. AMENDMENT. Section 28-32-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-15. Appeal from determination of agency - Time to appeal - How appeal taken. Any party to any proceeding heard by an administrative agency, except in cases where the decision of the administrative agency is declared final by any other statute, may appeal from such decision within thirty days after notice thereof has been given, or if a rehearing has been requested as provided herein and denied, within thirty days after notice of such denial has been mailed to him. Such appeal may be taken to the district court designated by law, and if none is designated, then to the district court of the county wherein the hearing or a part thereof was held. 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 pending of a hearing before it shall not be deemed a final order nor an order affecting a substantial right. Such 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 administrative agency, and by filing the notice of appeal and specifications of error together with proof of service thereof, and the undertaking herein required, with the clerk of the district court to which such appeal is taken. 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 appeal of agency actions taken pursuant to section 28-32-02, persons participating in the rulemaking proceeding need not be named respondents. The agency and all parties of record have

the right to participate in the appeal. An undertaking must be executed by the appellant, with sufficient surety to be approved by the judge of the district court, conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against him in the district court. Such undertaking shall 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 2. AMENDMENT. Section 28-32-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-21. Review in supreme court. The judgment of the district court in an appeal from a decision of an administrative agency may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-19, 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.

Approved March 22, 1985

CHAPTER 357

SENATE BILL NO. 2403
(Senators Lips, Todd, Wright)
(Representatives Riley, Whalen)

ADMINISTRATIVE HEARING ATTORNEY FEES

AN ACT to create and enact a new section to chapter 28-32 of the North Dakota Century Code, to provide for the award of attorneys' fees and costs in proceedings involving administrative agencies.

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

SECTION 1. A new section to chapter 28-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 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 judicial proceeding brought by a person against an administrative agency for judicial review of a final order or decision, or the legality of a rule adopted pursuant to this chapter.
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, 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.

Approved March 28, 1985

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 358

HOUSE BILL NO. 1238
(Dorso, Wold)

VENUE OF MULTIPLE CREDIT CARD THEFT OFFENSES

AN ACT to create and enact a new section to chapter 29-03 of the North Dakota Century Code, relating to venue of multiple theft offenses involving credit cards.

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

SECTION 1. A new section to chapter 29-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Venue of multiple theft offenses involving credit cards. If any of a series of thefts can be charged as one offense for purposes of grading under subsection 6 of section 12.1-23-05, if each of those thefts involved the use of a credit card, and if the total value of the property or services stolen is at least fifty dollars, venue for the criminal action, in which the series of thefts is charged as one offense, is in any county where any of the thefts was committed.

Approved March 14, 1985

CHAPTER 359

HOUSE BILL NO. 1454
(Representative Rydell)
(Senator Olson)

CHILD SEXUAL ABUSE PROSECUTIONS LIMITATIONS

AN ACT to create and enact a new section to chapter 29-04 of the North Dakota Century Code, relating to the limitation of time within which a prosecution for child sexual abuse must be commenced.

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

SECTION 1. A new section to chapter 29-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prosecution for child sexual abuse within seven years. An information, indictment, or complaint for violation of sections 12.1-20-03 through 12.1-20-08, and 12.1-20-11, where the victim and the actor were in a familial relationship at the time the offense was committed, shall be found, made, or filed in the proper court within seven years after the commission of the offense.

"Familial relationship", for purposes of this section, means a situation in which the actor is any of the following:

1. The complainant's parent, stepparent, or guardian.
2. Nearer of kin to the complainant than first cousin, computed by rules of the civil law, whether of the half or the whole blood.
3. The brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great grandparent, great uncle, or great aunt of the complainant, by marriage or adoption.
4. An adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

Approved March 27, 1985

CHAPTER 360

SENATE BILL NO. 2434
(Stenehjem, Christensen)

DOMESTIC VIOLENCE WARRANTLESS ARRESTS

AN ACT to amend and reenact subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to arrest without a warrant in domestic violence cases.

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

SECTION 1. AMENDMENT. Subsection 1 of section 29-06-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A peace officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision a crime shall be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. For domestic violence pursuant to section 14-07-1-06 If the peace officer has probable cause to believe the person within the preceding four hours, has assaulted his or her spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

Approved March 30, 1985

CHAPTER 361

SENATE BILL NO. 2117
(Committee on Judiciary)
(At the request of the Supreme Court)

GRAND JURY EXPENSES PAID BY STATE

AN ACT to amend and reenact section 29-10.1-18 of the North Dakota Century Code, relating to expenses of grand juries.

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

SECTION 1. AMENDMENT. Section 29-10.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-10.1-18. Expenses. All necessary expenses of the grand jury incurred in its official capacity shall be paid by the ~~county out of the general fund~~ state out of funds appropriated to the supreme court.

Approved March 22, 1985

CHAPTER 362

HOUSE BILL NO. 1564
(Murphy)

STATEWIDE GRAND JURY AUTHORITY

AN ACT to amend and reenact section 29-10.2-01 of the North Dakota Century Code, relating to expansion of the statewide grand jury jurisdiction to investigate civil fraud or deception.

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

SECTION 1. AMENDMENT. Section 29-10.2-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-10.2-01. Definition. As used in this chapter, "organized crime" means racketeering, as defined in section 12.1-06.1-01, or any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid, or abet the violation of criminal laws relating to prostitution, gambling, loansharking, drug abuse, illegal alcohol or drug distribution, counterfeiting, extortion, or corruption of law enforcement officers or other public officers or employees.

Approved March 27, 1985

CHAPTER 363

SENATE BILL NO. 2287
(Olson)

CRIMINAL APPEALS BY STATE

AN ACT to amend and reenact section 29-28-07 of the North Dakota Century Code, relating to the right of the state to appeal in criminal prosecutions.

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

SECTION 1. AMENDMENT. Section 29-28-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-28-07. From what the state may appeal. An appeal may be taken by the state from:

1. An order quashing an information or indictment or any count thereof.
2. An order granting a new trial.
3. An order arresting judgment.
4. An order made after judgment affecting any substantial right of the state.
5. An order granting the return of property or suppressing evidence, or suppressing a confession or admission, when accompanied by a statement of the prosecuting attorney asserting that the deprivation of the use of the property ordered to be returned or suppressed or of a confession or admission ordered to be suppressed has rendered the proof available to the state with respect to the criminal charge filed with the court; (1) insufficient as a matter of law; or (2) so weak in its entirety that any possibility of prosecuting such charge to a conviction has been effectively destroyed appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding. The statement shall ~~must~~ be filed with the clerk of district court and a copy thereof shall must accompany the notice of appeal.

Approved March 30, 1985

CHAPTER 364

SENATE BILL NO. 2179
(Committee on Judiciary)
(At the request of the Commission on Uniform State Laws)

UNIFORM EXTRADITION AND RENDITION ACT

AN ACT to adopt the Uniform Extradition and Rendition Act (1980), relating to the interstate retrieval of fugitives; and to repeal chapters 29-30.1 and 29-30.2 of the North Dakota Century Code and section 29 of chapter 375 of the 1979 Session Laws, relating to the Uniform Rendition of Accused Persons Act and the Uniform Criminal Extradition Act.

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

SECTION 1. (1-101) Definitions. As used in this Act:

1. "Arrest warrant" means any document that authorizes a peace officer to take custody of a person.
2. "Certified copy" means a copy of a document accompanied by a statement of a custodian authorized by the law of a state to maintain the document that the copy is a complete and true copy of an official record filed and maintained in a public office.
3. "Demanded person" means a person whose return to a demanding state is sought from another state by extradition under sections 8 through 14.
4. "Demanding state" means a state that is seeking the return of a person from another state through the process of extradition under sections 8 through 14.
5. "Executive authority" means the chief executive in a state other than this state, any person performing the functions of chief executive, or a representative designated by the chief executive.
6. "Governor" means the governor of this state, any person performing the functions of governor or a representative designated by the governor.

7. "Issuing authority" means any person who may issue or authorize the issuance of an arrest warrant.
8. "Requested person" means a person whose return to a requesting state is sought from another state by rendition under sections 15 through 20.
9. "Requesting state" means a state that is seeking the return of a person from another state through the process of rendition under sections 15 through 20.

SECTION 2. (1-102) Conditions of release. The law of pretrial release of this state governs release of a person pursuant to sections 6, 13, 19, and 21.

SECTION 3. (1-103) Nonwaiver by this state. This Act and proceedings under it are not exclusive and do not affect the authority of this state to:

1. Try a demanded or requested person for a crime committed within this state;
2. Take custody of a demanded or requested person by extradition or rendition proceedings for the purpose of trial, sentence, or punishment for a crime committed within this state;
3. Take custody of a person under other provisions of law, including interstate agreements; or
4. Release a person from custody upon any valid conditions.

SECTION 4. (2-101) Arrest without warrant.

1. A peace officer may arrest a person without an arrest warrant upon probable cause to believe that the person is the subject of another state's arrest warrant issued for:
 - a. Commission of a crime punishable by death or imprisonment for a term exceeding one year;
 - b. Escape from confinement; or
 - c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.
2. The arrested person must be brought forthwith before a magistrate in the county where arrest is made.
3. The magistrate shall issue an order to continue custody or other process to assure the appearance of the person, if testimony or affidavit shows probable cause to believe the person is the subject of another state's arrest warrant issued for:

- a. The commission of a crime punishable by death or imprisonment for a term exceeding one year;
- b. Escape from confinement; or
- c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

SECTION 5. (2-102) Issuance of process or arrest warrant prior to receipt of demand or request.

1. A magistrate in the county where arrest is sought shall authorize the issuance of an arrest warrant or other process to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe:
 - a. The person is in this state; and
 - b. The person is the subject of another state's arrest warrant issued for:
 - (1) The commission of a crime punishable by death or imprisonment for a term exceeding one year;
 - (2) Escape from confinement; or
 - (3) Violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.
2. Other process to obtain the appearance of a person must require the appearance before a magistrate.
3. The arrest warrant must require that the person be brought forthwith before a magistrate.

SECTION 6. (2-103) Appearance prior to receipt of demand or request.

1. The magistrate shall inform the person appearing pursuant to section 4 or 5, of:
 - a. The name of the other state that has subjected the person to an arrest warrant;
 - b. The basis for the arrest warrant in the other state;
 - c. The right to assistance of counsel; and
 - d. The right to require a judicial hearing under this Act before transfer of custody to the other state.
2. After being informed by the magistrate of the effect of a waiver, the arrested person may waive the right to require a judicial hearing under this Act and consent to return to the other state by executing a written waiver in the

presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 21 or, with the consent of the official upon whose application the arrest warrant was issued in the other state, authorize the voluntary return of the person to that state.

3. Unless a waiver is executed pursuant to subsection 2, the magistrate shall:
 - a. Release the person upon conditions that will reasonably assure availability of the person for arrest pursuant to section 12 or section 18; or
 - b. Direct a law enforcement officer to maintain custody of the person.

Subject to section 7, the period of conditional release or custody may not exceed thirty days.

SECTION 7. (2-104) Extension of time.

1. If the person is not arrested pursuant to section 12 or section 18 within the period specified in the arrest warrant or other process, the magistrate for good cause may issue further orders under subsection 3 of section 6 for additional periods not exceeding a total of sixty days. Further extensions of orders may be requested by the person under subsection 3 of section 6.
2. If the person is not arrested pursuant to section 12 or section 18 within the time specified by the magistrate, the person may not be subjected to any further order in this state under subsection 3 of section 6. If the person is subsequently arrested in this state under section 4 or 5 on the basis of the same arrest warrant of the other state, the person may not be subjected to the issuance of orders under subsection 3 of section 6 and must be released from custody. However, the person may be arrested thereafter pursuant to section 12 or 18.

SECTION 8. (3-101) Demand for extradition.

1. The governor may recognize a written demand by an executive authority for the extradition of a person, alleging that the person:
 - a. Is charged with a crime in the demanding state; or,
 - b. Having been charged with or convicted of a crime in the demanding state has:
 - (1) Escaped from confinement; or

- (2) Violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding state.
2. The governor may demand the extradition of a person from another state in accordance with the Constitution of the United States and may comply with the requirements of the other state for recognition of a demand.

SECTION 9. (3-102) Supporting documentation. A demand for extradition must be accompanied by a certified copy of an arrest warrant and one of the following:

1. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
2. A certified copy of the indictment upon which the arrest warrant is based.
3. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding.
4. A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

SECTION 10. (3-103) Governor's investigation. The governor may:

1. Investigate the demand for extradition and the circumstances of the demanded person;
2. Request the attorney general or any state's attorney to investigate; or
3. Hold a hearing.

SECTION 11. (3-104) Extradition of persons imprisoned or awaiting trial.

1. If a demanded person is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in this state, the governor may:
 - a. Grant extradition;

- b. Delay action; or
 - c. Agree with the executive authority of the demanding state to grant extradition upon conditions.
2. The governor may agree with an executive authority of another state for the extradition of a person who is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in that state upon conditions prescribed by the agreement.

SECTION 12. (3-105) Governor's warrant.

1. If the governor decides to comply with the demand for extradition, the governor shall issue a warrant for the arrest and extradition of the demanded person. The governor's warrant must recite the name of the state demanding extradition and the crime charged or other basis for the demand.
2. The governor may specify the time and manner in which the warrant is executed.
3. At any time before the transfer of custody of the demanded person to the agent of the demanding state, the governor may recall the warrant or issue another warrant.
4. The warrant must be directed to any law enforcement officer and require compliance with section 13.
5. The law relating to assistance in the execution of other arrest warrants in this state applies to the execution of the governor's warrant.

SECTION 13. (3-106) Rights of demanded person.

1. A person arrested under a governor's warrant must be brought forthwith before a magistrate, in the county where the person is arrested, who shall receive the warrant and inform the person of:
- a. The name of the state demanding extradition;
 - b. The crime charged or other basis for the demand;
 - c. The right to assistance of counsel; and
 - d. The right to a judicial hearing under section 14.
2. After being informed by the magistrate of the effect of a waiver, the demanded person may waive the right to a judicial hearing and consent to return to the demanding state by executing a written waiver in the presence of the

magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 21 or, with the consent of the executive authority of the demanding state, authorize the voluntary return of the person.

3. If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The demanded person and the state's attorney of the county in which the hearing is to be held must be informed of the time and the place of the hearing. The magistrate shall:
 - a. Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
 - b. Direct a law enforcement officer to maintain custody of the person.

SECTION 14. (3-107) Judicial extradition hearing.

1. If the magistrate after hearing finds that the governor has issued a warrant supported by the documentation required by subsection 1 of section 8 and section 9, the magistrate shall issue an order to transfer custody pursuant to section 21 unless the arrested person establishes by clear and convincing evidence that the arrested person is not the demanded person.
2. If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the demanding state has not taken custody within the time specified in the order to transfer custody, the demanded person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.
3. An order to transfer custody is not appealable.
4. An order denying transfer is appealable.

SECTION 15. (4-101) Request for rendition.

1. Subject to subsections 2 and 3, this state may grant a written request by an issuing authority of another state for the rendition of a person in this state.
2. The request must be refused if the requested person is:
 - a. Being prosecuted or is imprisoned in this state for a criminal offense;

- b. The subject of a pending proceeding in a juvenile court of this state brought for the purpose of adjudicating the person to be a delinquent child;
 - c. In the custody of an agency of this state pursuant to an order of disposition of a juvenile court of this state as a delinquent child; or
 - d. Under the supervision of the juvenile court of this state pursuant to informal adjustment or an order of disposition of the court.
3. The request must allege that the person:
 - a. Is charged with a crime punishable in the requesting state by death or imprisonment for a term exceeding one year in the requesting state; or
 - b. Having been charged with or convicted of a crime in the requesting state, has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the requesting state.
 4. Upon application of the attorney general or a state's attorney, an issuing authority may request rendition of a person from another state and may comply with requirements of that state for the granting of the request. A correction official who is also an issuing authority may request rendition from another state of a person described in subdivision b of subsection 3, and subject to the jurisdiction of the correction official.

SECTION 16. (4-102) Supporting documentation. A request for rendition must be accompanied by a certified copy of the arrest warrant and one of the following:

1. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the requested person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
2. A certified copy of the indictment upon which the arrest warrant is based.
3. A statement by the issuing authority that the warrant was issued after a determination of probable cause to believe that the requested person has violated any term of bail, probation, or other judicial order arising out of a criminal proceeding.

4. A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the requested person has escaped from confinement or violated any term of parole.

SECTION 17. (4-103) Filing of request. A request for rendition under section 15 must be filed with the attorney general's office, which office shall forward the request to the proper state's attorney. The governor by written order may terminate the use of rendition at any time before the issuance of an order to transfer custody.

SECTION 18. (4-104) Issuance of arrest warrant or process. Upon receipt of a request under section 17, the prosecuting official shall apply to a magistrate for the issuance of an arrest warrant, or other process, to obtain the appearance of the requested person. If the magistrate finds that the provisions of sections 15 and 16 have been complied with, the magistrate shall issue the warrant or other process. The warrant must require that the person be brought forthwith before the magistrate. Other process to obtain the appearance of a person must require the appearance before a magistrate.

SECTION 19. (4-105) Rights of requested person.

1. The magistrate shall inform the person appearing pursuant to section 18 of:
 - a. The name of the state requesting rendition;
 - b. The basis for the arrest warrant in the other state;
 - c. The right to assistance of counsel; and
 - d. The right to require a judicial hearing pursuant to section 20.
2. After being informed by the magistrate of the effect of a waiver, the requested person may waive the right to a judicial hearing and consent to return to the requesting state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 21 or with consent of the official upon whose application the request was issued authorize the voluntary return of the person.
3. If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The requested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The magistrate shall:

- a. Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
- b. Direct a law enforcement officer to maintain custody of the person.

SECTION 20. (4-106) Judicial rendition hearing.

1. If the magistrate after hearing finds that sections 15 and 16 have been complied with, the magistrate shall issue an order to transfer custody pursuant to section 21 unless the arrested person establishes by clear and convincing evidence that arrested person is not the requested person.
2. If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the requesting state has not taken custody within the time specified in the order to transfer custody, the requested person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.
3. An order to transfer custody is not appealable.
4. An order denying transfer is appealable.

SECTION 21. (5-101) Order to transfer custody.

1. Except as provided in subsection 2, a judicial order to transfer custody issued pursuant to section 6, 13, 14, 19, or 20 must direct a law enforcement officer to take or retain custody of the person until an agent of the other state is available to take custody. If the agent of the other state has not taken custody within ten days, the magistrate may:
 - a. Order the release of the person upon conditions that will assure the person's availability on a specified date within thirty days; or
 - b. Extend the original order for an additional ten days upon good cause shown for the failure of an agent of the other state to take custody.
2. If the agent of the other state has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or other process to obtain appearance of a person is issued as a result of a new demand for extradition or a new request for rendition.

3. The magistrate in the order may authorize the voluntary return of the person with consent of the executive authority or with the consent of the official upon whose application the request for rendition was made.

SECTION 22. (5-102) Confinement. An agent who has custody of a person pursuant to an order to transfer custody issued in any state may request confinement of the person in any detention facility in this state while transporting the person pursuant to the order. Upon production of proper identification of the agent and a copy of the order, the detention facility shall confine the person for that agent. The person is not entitled to another extradition or rendition proceeding in this state.

SECTION 23. (5-103) Cost of return. Unless the states otherwise agree, the state to which the person is being returned shall pay the cost of returning the person incurred after transfer of custody to its agent.

SECTION 24. (5-104) Applicability of other law.

1. A person returned to this state is subject to the law of this state as well as the provisions of law that constituted the basis for the return.
2. This Act does not limit the powers, rights, or duties of the officials of a demanding, or requesting, state or of this state.

SECTION 25. (5-105) Payment of transportation and subsistence costs. If a person returned to this state is found not to have violated the law that constituted the basis for the return, the magistrate may order the county or state to pay the person the cost of transportation and subsistence to:

1. The place of the person's initial arrest; or
2. The person's residence.

SECTION 26. Time of taking effect. This Act takes effect and governs all extraditions and renditions initiated after June 30, 1985.

SECTION 27. REPEAL. Chapter 29-30.1 of the North Dakota Century Code, chapter 29-30.2 of the 1983 Supplement to the North Dakota Century Code, and section 29 of chapter 375 of the 1979 Session Laws are hereby repealed.

Approved March 28, 1985

CHAPTER 365

HOUSE BILL NO. 1093
(Representatives Murphy, O. Hanson)
(Senator D. Meyer)

CONFISCATION OF PROPERTY USED IN THEFT OF LIVESTOCK

AN ACT to create and enact a new section to chapter 29-31 of the North Dakota Century Code, relating to the confiscation of property used in the theft of livestock; and to amend and reenact sections 29-31-03, 29-31-04, and 29-31-08 of the North Dakota Century Code, relating to the confiscation of equipment used in commission of crime.

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

SECTION 1. A new section to chapter 29-31 of the North Dakota Century Code is hereby created and enacted to read as follows:

Theft of livestock - Confiscation of property. A court having jurisdiction over the criminal prosecution of any person, following the conviction of that person for committing or attempting to commit the theft of any livestock, or transporting any stolen livestock, may order the confiscation and forfeiture to the state of any personal property used in the theft or transportation of livestock, if that property was not confiscated under section 29-31-01.

SECTION 2. AMENDMENT. Section 29-31-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-31-03. Court to order forfeiture of vehicle. The district court, upon conviction of the person arrested, or upon his entry of a plea of guilty, or upon the failure of the officer after one month of effort to locate or arrest the person who used such vehicle or other means of conveyance in connection with the commission of the felony, shall order the vehicle or other means of conveyance ~~se~~ confiscated under section 29-31-01 to be forfeited.

SECTION 3. AMENDMENT. Section 29-31-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-31-04. Summons on forfeiture - Contents and service. The district court shall require the state's attorney of the county in which the ~~felony~~ crime was committed to cause a summons to be issued out of

the district court against all persons having any right, title, or interest in the property seized under section 29-31-01 or section 1 of this Act. Such summons shall describe the property with particularity and shall state that the same is held for forfeiture and sale under the provisions of this chapter and that in default of an answer or claim filed within thirty days after the service of the summons the court will enter its order forfeiting such property to the state of North Dakota. The summons shall be served in the manner provided for the service of summons in a civil action. When the name of the owner of such property can be ascertained, such summons shall be served upon him personally or by registered or certified mail.

SECTION 4. AMENDMENT. Section 29-31-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-31-08. Disposition of proceeds of sale. After deducting the costs and expenses of a proceeding for sale under this chapter, the balance of all money received under the provisions of the chapter shall be paid to the treasurer of the county wherein the ~~felony~~ crime was committed for the benefit of the state school fund.

Approved March 14, 1985

CHAPTER 366

SENATE BILL NO. 2181
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

UNIFORM POSTCONVICTION PROCEDURE ACT

AN ACT to adopt the Uniform Postconviction Procedure Act (1980), relating to a remedy to a person convicted of and sentenced for a crime and the procedure for challenging the validity of the conviction or sentence; to repeal chapter 29-32 of the North Dakota Century Code, relating to the Uniform Postconviction Procedure Act; and to provide an effective date.

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

SECTION 1. Remedy - To whom available - Conditions.

1. A person who has been convicted of and sentenced for a crime may institute a proceeding applying for relief under this Act upon the ground that:
 - a. The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota;
 - b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected;
 - c. The court that rendered the judgment of conviction and sentence was without jurisdiction over the person of the applicant or the subject matter;
 - d. The sentence is not authorized by law;
 - e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice;

- f. A significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively;
 - g. The sentence has expired, probation or parole or conditional release was unlawfully revoked, or the applicant is otherwise unlawfully in custody or restrained; or
 - h. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error available before July 1, 1985, under any common law, statutory or other writ, motion, proceeding, or remedy.
2. A proceeding under this Act is not a substitute for and does not affect any remedy incident to the prosecution in the trial court or direct review of the judgment of conviction or sentence in an appellate court. Except as otherwise provided in this Act, a proceeding under this Act replaces all other common law, statutory, or other remedies available before July 1, 1985, for collaterally challenging the validity of the judgment of conviction or sentence. It is to be used exclusively in place of them. A proceeding under this Act is not available to provide relief for disciplinary measures, custodial treatment, or other violations of civil rights of a convicted person occurring after the imposition of sentence.

SECTION 2. Exercise of original jurisdiction in habeas corpus. A court in which original jurisdiction in habeas corpus is vested may entertain a habeas corpus proceeding under chapter 32-22 or this Act. This Act, to the extent appropriate, governs the proceeding.

SECTION 3. Commencement of proceedings - Filing - Service.

1. A proceeding is commenced by filing an application with the clerk of the court in which the conviction and sentence took place. The state must be named as respondent. No filing fee is required.
2. An application may be filed at any time.
3. If an application is filed before the time for appeal from the judgment of conviction or sentence has expired, the court, on motion of the applicant, may extend the time for appeal until a final order has been entered in the proceeding under this Act.
4. If an application is filed while an appeal or other review is pending, the appellate court, on motion of either party or on its own motion, may defer further action on the appeal or other review until the determination of the application by the trial court or may order the

application certified and consolidated with the pending appeal or other review.

5. Upon receipt of an application, the clerk shall forthwith file it, make an entry in the appropriate docket, and deliver a copy to the state's attorney of the county in which the criminal action was venued.
6. If the applicant is not represented by counsel, the clerk shall notify the applicant that assistance of counsel may be available to persons unable to obtain counsel. The clerk shall also inform the applicant of the procedure for obtaining counsel.
7. The application may be considered by any judge of the court in which the conviction took place.

SECTION 4. Application - Contents.

1. The application must identify the proceedings in which the applicant was convicted and sentenced, give the date of the judgment and sentence complained of, set forth a concise statement of each ground for relief, and specify the relief requested. Argument, citations, and discussion of authorities are unnecessary.
2. The application must identify all proceedings for direct review of the judgment of conviction or sentence and all previous postconviction proceedings taken by the applicant to secure relief from the conviction or sentence, the grounds asserted therein, and the orders or judgments entered. The application must refer to the portions of the record of prior proceedings pertinent to the alleged grounds for relief. If the cited record is not in the files of the court, the applicant shall attach that record or portions thereof to the application or state why it is not attached. Affidavits or other material supporting the application may be attached, but are unnecessary.

SECTION 5. Appointment of counsel - Applicant's inability to pay costs and litigation expenses.

1. If an applicant requests appointment of counsel and the court is satisfied that the applicant is unable to obtain adequate representation, the court shall appoint counsel to represent the applicant.
2. Costs and expenses incident to a proceeding under this Act, including fees for appointed counsel, must be reimbursed in the same manner as are costs and expenses incurred in the defense of criminal prosecutions.

SECTION 6. Response by answer or motion.

1. Within thirty days after the docketing of an application or within any further time the court may allow, the state shall respond by answer or motion.
2. The state may move to dismiss an application on the ground that it is evident from the application that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings. In considering the motion, the court shall take account of substance regardless of defects of form.
3. The following defenses may be raised by answer or motion:
 - a. The claim has been fully and finally determined in a previous proceeding in accordance with subsection 1 of section 12; or
 - b. The application constitutes misuse of process in accordance with subsection 2 of section 12.

SECTION 7. Amended and supplemental pleadings.

1. The court may make appropriate orders allowing amendment of the application or any pleading or motion, allowing further pleadings or motions, or extending the time for filing any pleading.
2. At any time before the entry of judgment, the court, for good cause, may grant leave to withdraw the application without prejudice.

SECTION 8. Discovery. The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

SECTION 9. Summary disposition.

1. The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.
2. If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

SECTION 10. Hearing - Evidence.

1. Evidence must be presented in open court, recorded, and preserved as part of the record of the proceedings.

2. A certified record of previous proceedings may be used as evidence of facts and occurrences established therein, but use of that record does not preclude either party from offering additional evidence as to those facts and occurrences.
3. The deposition of a witness may be received in evidence, without regard to the availability of the witness, if written notice of intention to use the deposition was given in advance of the hearing and the deposition was taken subject to the right of cross-examination.

SECTION 11. Findings of fact - Conclusions of law - Order.

1. The court shall make explicit findings on material questions of fact and state expressly its conclusions of law relating to each issue presented.
2. If the court rules that the applicant is not entitled to relief, its order must indicate whether the decision is based upon the pleadings, is by summary disposition, or is the result of an evidentiary hearing.
3. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the previous proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

SECTION 12. Affirmative defenses - Res judicata - Misuse of process.

1. An application for postconviction relief may be denied on the ground that the same claim or claims were fully and finally determined in a previous proceeding.
2. A court may deny relief on the ground of misuse of process. Process is misused when the applicant:
 - a. Presents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous postconviction proceeding; or
 - b. Files multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous.
3. Res judicata and misuse of process are affirmative defenses to be pleaded by the state. The burden of proof is also upon the state, but, as to any ground for relief which, by statute or rule of court, must be presented as a defense or objection at a specified stage of a criminal

prosecution, the applicant shall show good cause for noncompliance with the statute or rule.

SECTION 13. Reimbursement of costs and litigation expenses. If an application is denied, the state may move for an order requiring the applicant to reimburse the state for costs and for litigation expenses paid for the applicant from public funds. The court may grant the motion if it finds that the applicant's claim is so completely lacking in factual support or legal basis as to be frivolous or that the applicant has deliberately misused process. The court may require reimbursement of costs and expenses only to the extent reasonable in light of the applicant's present and probable future financial resources.

SECTION 14. Review. A final judgment entered under this Act may be reviewed by the supreme court of this state upon appeal filed either by the applicant within ten days or by the state within thirty days after the entry of judgment.

SECTION 15. EFFECTIVE DATE. This Act governs all convictions occurring after June 30, 1985.

SECTION 16. REPEAL. Chapter 29-32 of the North Dakota Century Code is hereby repealed.

Approved March 30, 1985

UNIFORM PROBATE CODE

CHAPTER 367

HOUSE BILL NO. 1095
(Riley)

RENUNCIATION BY PERSONAL REPRESENTATIVE

AN ACT to amend and reenact subsection 1 of section 30.1-10-01 and section 47-11.1-01 of the North Dakota Century Code, relating to the right of a personal representative of a deceased person to renounce property.

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

SECTION 1. AMENDMENT. Subsection 1 of section 30.1-10-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A person, the personal representative of a deceased person, or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The instrument shall:
 - a. Describe the property or interest renounced.
 - b. Declare the renunciation and the extent thereof.
 - c. Be signed by the person renouncing.

SECTION 2. AMENDMENT. Section 47-11.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-11.1-01. **Right to disclaim transfer.** A person, the personal representative of a deceased person, or the representative of an incapacitated person or protected person, who is a grantee, donee, surviving joint tenant, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or contract, or

appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to ~~him~~ that person of any property or interest therein by delivering or filing a written disclaimer under this chapter. A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to ~~him~~ the survivor by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to ~~him~~ the survivor, if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit thereunder. ~~The right to disclaim does not survive the death of the person having it.~~ The disclaimer shall describe the property or interest therein disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant.

Approved March 14, 1985

CHAPTER 368

HOUSE BILL NO. 1424
(Schneider, Riley)

PROBATE JURY TRIALS

AN ACT to amend and reenact section 30.1-15-04 of the North Dakota Century Code, relating to the right of and the demand for a jury trial in contested formal testacy proceedings.

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

SECTION 1. AMENDMENT. Section 30.1-15-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-15-04. (3-404) Formal testacy proceedings - Written objections to probate - Demand for jury trial. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his that party's pleadings his the objections to probate of the will. In a contested formal testacy proceeding, any party is entitled to a jury trial of all issues of fact by serving upon all appropriate parties and filing with the court a written demand for jury trial. The written demand must be affixed to the pleading of the party which raises any issues of fact and may not be served and filed later than seven days before the time set for hearing.

Approved March 22, 1985

CHAPTER 369

SENATE BILL NO. 2417
(Senator Stenehjem)
(Representatives Ulmer, D. Olsen)

GRAFTON STATE SCHOOL SUPERINTENDENT AS GUARDIAN

AN ACT to amend and reenact sections 25-04-13.1, 30.1-01-06, 30.1-26-01, 30.1-28-03, 30.1-28-04, and 30.1-28-11 of the North Dakota Century Code, and section 16 of chapter 313 of the 1983 Session Laws of North Dakota, relating to the superintendent of Grafton state school acting as guardian and limited guardianship or conservatorship.

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

SECTION 1. AMENDMENT. Section 25-04-13.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-13.1. Guardianship - Superintendent to act as guardian.

1. The superintendent of Grafton state school shall continue to be guardian until July 1, ~~1985~~ 1987, of any resident of Grafton state school for ~~which~~ whom he is guardian on July 1, ~~1983~~ 1985, except as otherwise provided by court order, except where the resident is discharged from Grafton, or except as otherwise provided by this section. The superintendent may renounce in writing his guardianship of any resident between July 1, ~~1983~~ 1985, and July 1, ~~1985~~ 1987. The resident will not have a guardian upon renunciation by the superintendent. The guardianship of a minor for ~~which~~ whom there has been no court-ordered alternate guardian appointed will revert back to the minor's parents on renunciation by the superintendent or on July 1, ~~1985~~ 1987. The superintendent shall provide written notice of any intended renunciation to the resident and the resident's parent, advocate, and case manager thirty days before the effective date of the renunciation, or on June 1, ~~1985~~ 1987, whichever date occurs first.
2. The guardianship provided by this section carries the same duties and powers as court-appointed guardians provided

for in chapters 30.1-26 through 30.1-30. Nothing contained in this section affects any parental financial responsibility for the resident as may otherwise be required by law.

3. Court proceedings for the appointment of a guardian for an individual presently or formerly a ward of the superintendent of the Grafton state school pursuant to this section must, upon request of the petitioner, be handled by the state's attorney of the county in which the action is brought. The county of any state's attorney involved in more than ~~thirty~~ fifteen petitions per calendar year is entitled to reimbursement for the time and expenses of the state's attorney from the director of institutions in the amount the director of institutions determines reasonable.
4. The costs necessitated by guardianship hearings held pursuant to this section must be paid, in order of priority, by:
 - a. The incapacitated person if, in the discretion of the court, sufficient assets are available.
 - b. The state through the department of human services.

SECTION 2. AMENDMENT. Section 30.1-01-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-01-06. (1-201) General definitions. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
2. "Augmented estate" means the estate described in section 30.1-05-02.
3. "Beneficiary", as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer, and as it relates to a charitable trust, includes any person entitled to enforce the trust.
4. "Child" includes any individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

5. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands, or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
6. "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the county court.
7. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as described by sections 30.1-29-20 defined in this section.
8. "Devise", when used as a noun, means a testamentary disposition of real or personal property, and when used as a verb, means to dispose of real or personal property by will.
9. "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
10. "Disability" means cause for a protective order as described by section 30.1-29-01.
11. "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.
12. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.
13. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.

14. "Fiduciary" includes personal representative, guardian, conservator, and trustee.
15. "Foreign personal representative" means a personal representative of another jurisdiction.
16. "Formal proceedings" means those conducted before a judge with notice to interested persons.
17. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as described by section 30.1-28-04 defined in this section, but excludes one who is merely a guardian ad litem.
18. "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
19. "Incapacitated person" is as defined in section 30.1-26-01.
20. "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.
21. "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
22. "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this title.
23. "Lease" includes an oil, gas, or other mineral lease.
24. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
25. "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court

for the person with limited capacity, and includes limited conservators as described by section 30.1-29-20.

- ~~26-~~ 26. "Limited guardian" means a person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of a person with limited capacity, and includes limited guardians as described by section 30.1-28-04.
- ~~27-~~ 27. "Minor" means a person who is under eighteen years of age.
- ~~28-~~ 28. "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.
- ~~29-~~ 29. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.
- ~~30-~~ 30. "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.
- ~~31-~~ 31. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
- ~~32-~~ 32. "Person" means an individual, a corporation, an organization, or other legal entity.
- ~~33-~~ 33. "Person with limited capacity" is as defined in section 30.1-26-01.
- ~~34-~~ 34. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.
- ~~35-~~ 35. "Petition" means a written request to the court for an order after notice.
- ~~36-~~ 36. "Proceeding" includes an action at law, and a suit in equity in a district court or an exercise by the court of equitable powers or an application of equitable principles.
- ~~37-~~ 37. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

- ~~35-~~ 38. "Protected person" is as defined in section 30.1-26-01.
- ~~36-~~ 39. "Protective proceeding" is as defined in section 30.1-26-01.
- ~~37-~~ 40. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.
- ~~38-~~ 41. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
- ~~39-~~ 42. "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.
- ~~40-~~ 43. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.
- ~~41-~~ 44. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- ~~42-~~ 45. "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this title.
- ~~43-~~ 46. "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- ~~44-~~ 47. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- ~~45-~~ 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, chapter 47-24, 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.

- 46- 49. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- 47- 50. "Ward" is as defined in section 30.1-26-01.
- 48- 51. "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

SECTION 3. AMENDMENT. Section 30.1-26-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-26-01. (5-101) Definitions and use of terms. Unless otherwise apparent from the context, in this title:

1. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, ~~advanced age~~, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.
2. "Person with limited capacity" means a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority, but who is able to make independently some, but not all, of the decisions necessary for that person's own care and the management of that person's property.
3. A "protective proceeding" is a proceeding under the provisions of section 30.1-29-01 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.
- 3- 4. A "protected person" is a minor or other person for whom a conservator or limited conservator has been appointed or other protective order has been made.

- ~~4-~~ 5. A "ward" is a person for whom a guardian or limited guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

SECTION 4. AMENDMENT. Section 30.1-28-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.

1. The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian, limited or general.
2. Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and shall also be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made. The visitor shall submit his report in writing to the court. The person appointed as visitor may not also be appointed as guardian ad litem for the person alleged to be incapacitated.
3. Where possible without undue delay and expense beyond the ability to pay of the allegedly incapacitated person or any other person paying costs, the court, in formulating the judgment, may utilize the service of any public or charitable agency or nonprofit corporation that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, and to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.
- ~~4-~~ 4. The costs necessitated by hearings held pursuant to this chapter must be paid, in order of priority, by-

- a- The incapacitated person, if in the discretion of the court, sufficient assets are available-
- b- The spouse or parents of the incapacitated person if the court finds costs would not cause undue hardship-
- c- The state through the department of human services-

SECTION 5. AMENDMENT. Section 30.1-28-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-04. (5-304) Findings - Order of appointment.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure. A guardianship order may limit the guardian's powers in areas including residential, educational, medical, legal, vocational and financial decisions. The court shall determine in all cases in which a guardian is appointed whether the incapacitated person is mentally incompetent and as such is not qualified to vote.
2. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order, including the involvement of an advocate or the establishment of financial trusts or special bank accounts on behalf of the incapacitated person.
3. The court may appoint a limited guardian if it is satisfied that the person for whom a guardian is sought is a person with limited capacity and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person with limited capacity. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.
4. The court may, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated person shall be endorsed on the guardian's letters.

SECTION 6. AMENDMENT. Section 30.1-28-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-11. (5-311) Who may be guardian - Priorities.

1. Any competent person or a designated person from a suitable institution, agency, or nonprofit group home may be appointed guardian of an incapacitated person. No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. However, if no one else can be found to serve as guardian, an employee of an agency, institution, or nonprofit group home providing care and custody may be appointed guardian if the employee does not provide direct care to the proposed ward and provided that the court makes a specific finding that the appointment presents no substantial risk of a conflict of interest.
2. Persons who are not disqualified have priority for appointment as guardian in the following order:
 - a. The spouse of the incapacitated person.
 - b. An adult child of the incapacitated person.
 - c. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
 - d. Any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition.
 - e. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
 - f. A nonprofit corporation established to provide guardianship services; provided, that the corporation does not provide direct care to incapacitated persons. The corporation shall file with the court the name of an employee, volunteer, or other person from the corporation who is directly responsible for the guardianship of each incapacitated person, and shall notify the court in the event the person for any reason ceases to so act, or if a successor is named.
 - g. Any appropriate government agency, including county social service agencies, except as limited by subsection 1.
 - g- h. A person nominated by the person who is caring for the incapacitated person or paying benefits to him.

3. With respect to persons having equal priority, the court shall select the one it deems best qualified to serve. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority.

SECTION 7. AMENDMENT. Section 16 of chapter 313 of the 1983 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 16. EFFECTIVE DATE. Section 15 shall be effective on July 1, ~~1985~~ 1987.

Approved March 30, 1985

CHAPTER 370

SENATE BILL NO. 2172
(Committee on Judiciary)
(At the request of the Commission on Uniform State Laws)

UNIFORM DURABLE POWER OF ATTORNEY ACT

AN ACT to create and enact chapter 30.1-30 of the North Dakota Century Code as a new part 5 of article V of the Uniform Probate Code, relating to the Uniform Durable Power of Attorney Act; to amend and reenact sections 30.1-28-11 and 30.1-29-10 of the North Dakota Century Code, relating to the appointment of guardians and conservators; and to repeal the present chapter 30.1-30 of the North Dakota Century Code.

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

SECTION 1. AMENDMENT. Section 30.1-28-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-11. (5-311) Who may be guardian - Priorities.

1. Any competent person or a designated person from a suitable institution, agency, or nonprofit group home may be appointed guardian of an incapacitated person. No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. However, if no one else can be found to serve as guardian, an employee of an agency, institution, or nonprofit group home providing care and custody may be appointed guardian if the employee does not provide direct care to the proposed ward and ~~provided that~~ the court makes a specific finding that the appointment presents no substantial risk of a conflict of interest.
2. Persons Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney.
3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as guardian in the following order:

- a. The spouse of the incapacitated person.
- b. An adult child of the incapacitated person.
- c. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
- d. Any relative of the incapacitated person with whom he the incapacitated person has resided for more than six months prior to the filing of the petition.
- e. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
- f. Any appropriate government agency, including county social service agencies, except as limited by subsection 1.
- g. A person nominated by the person who is caring for the incapacitated person or paying benefits to him the incapacitated person.

SECTION 2. AMENDMENT. Section 30.1-29-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-29-10. (5-410) Who may be appointed conservator - Priorities.

1. The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. ~~The following are entitled to consideration for appointment in the order listed-~~
2. Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a conservator in accordance with the protected person's most recent nomination in a durable power of attorney.
3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as conservator in the following order:
 - a. A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides.
 - b. An individual or corporation nominated by the protected person by other means than provided for in subsection 2 if he the protected person is fourteen or more years of age and has, in the opinion of the

court, has sufficient mental capacity to make an intelligent choice.

- c. The spouse of the protected person.
 - d. An adult child of the protected person.
 - e. A parent of the protected person, or a person nominated by the will of a deceased parent.
 - f. Any relative of the protected person with whom he the protected person has resided for more than six months prior to the filing of the petition.
 - g. A person nominated by the person who is caring for the protected person or paying benefits to him the protected person.
- 2- 4. A person denominated in subdivisions a, c, d, e, or f of subsection 1 3 may nominate, in writing, a person substitute to serve in his stead instead and thereby transfer the priority to the substitute. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having higher priority and appoint a person having less lower priority or no priority.

SECTION 3. Chapter 30.1-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

30.1-30-01. (5-501) Definition. A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal," or "This power of attorney becomes effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity.

30.1-30-02. (5-502) Durable power of attorney not affected by disability. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled.

30.1-30-03. (5-503) Relation of attorney in fact to court-appointed fiduciary.

- 1. If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with

the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

2. A principal may nominate, by a durable power of attorney, the conservator, guardian of the principal's estate, or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

30.1-30-04. (5-504) Power of attorney not revoked until notice.

1. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal's successors in interest.
2. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

30.1-30-05. (5-505) Proof of continuance of durable and other powers of attorney by affidavit. As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that the attorney in fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

SECTION 4. REPEAL. Chapter 30.1-30 of the North Dakota Century Code is hereby repealed.

Approved March 28, 1985

JUDICIAL REMEDIES

CHAPTER 371

HOUSE BILL NO. 1426
(Goetz, Martinson)

GOOD SAMARITAN CARE TO ATHLETES

AN ACT to limit liability for gratuitous health care provided amateur athletes.

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

SECTION 1. Limited liability for gratuitous health care provided amateur athletes. Any person licensed to provide health care services in this state who in good faith voluntarily provides a health care service without compensation or the expectation of compensation for amateur athletes, or at an amateur athletic event, is not liable for any damages resulting from any act or omission in the rendering of that care including the failure to arrange for further treatment or care. This Act may not be construed to relieve the person of liability for injury or death of the person receiving the health care service proximately resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the care.

Approved March 27, 1985

CHAPTER 372

HOUSE BILL NO. 1159
(Representative Melby)
(Senator Streibel)

WRONGFUL LIFE ACTIONS PROHIBITED

AN ACT to prohibit certain tort actions based on claims of wrongful life.

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

SECTION 1. Definition. As used in this Act "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.

SECTION 2. Wrongful life action prohibited. No person may maintain a claim for relief or receive an award for damages on that person's own behalf based on the claim that, but for the act or omission of another, that person would have been aborted.

Approved March 29, 1985

CHAPTER 373

HOUSE BILL NO. 1427
(Representatives Whalen, Thompson, Wald)
(Senator Mutch)

ARBITRATION AGREEMENTS

AN ACT to amend and reenact section 32-04-12 of the North Dakota Century Code, relating to specific performance of agreements to arbitrate.

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

SECTION 1. AMENDMENT. Section 32-04-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-04-12. What obligations cannot be enforced specifically. The following obligations cannot be enforced specifically:

1. An obligation to render personal service.
2. An obligation to employ another in personal service.
3. ~~An agreement to submit a controversy to arbitration.~~
4. An agreement to perform an act ~~which~~ that the party has ~~not~~ no power lawfully to perform when required to do so.
- 5- 4. An agreement to procure the act or consent of the spouse of the contracting party or of any other third person.
- 6- 5. An agreement, the terms of which are not sufficiently certain to make the precise act ~~which~~ that is to be done clearly ascertainable.

Approved March 31, 1985

CHAPTER 374

HOUSE BILL NO. 1197
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

RECORDING BONDS TO PAY JUDGMENTS AGAINST POLITICAL SUBDIVISIONS

AN ACT to amend and reenact section 32-12.1-13 of the North Dakota Century Code, relating to the issuance of bonds to pay compromised judgments against political subdivisions.

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

SECTION 1. AMENDMENT. Section 32-12.1-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-13. ~~Negetiable bearer bonds~~ Bonds may be issued to pay compromised amount - Regulations governing. The compromised amount of a judgment agreed upon may be made payable in stated annual installments over a period not exceeding twenty-five years and at an annual rate of interest of not more than five percent. The governing body, by a resolution adopted by an affirmative vote of two-thirds of its members, may issue ~~negetiable bearer~~ bonds payable serially and maturing annually, as the parties may agree, and in the amounts of the annual installments and interest determined by the compromise, in satisfaction and discharge of the judgment. Bonds issued under this section shall be delivered to the judgment creditor upon the release of the judgment and in consideration of the full satisfaction thereof. The bonds shall be executed in the name of the political subdivision by the executive officer and the auditor or fiscal officer thereof. Except as otherwise provided in this chapter, the bonds shall be in the form prescribed for political subdivision bonds which are payable from the levy of a general tax. Prior to the delivery of the bonds to the judgment creditor, the bonds shall be registered certified and recorded by the auditor or fiscal officer in the manner provided by the laws of this state for the ~~registration~~ certification and recording of general obligation bonds of political subdivisions.

Approved March 1, 1985

CHAPTER 375

SENATE BILL NO. 2290
(Olson)

ACREAGE IN FORECLOSURE

AN ACT to amend and reenact section 32-19.1-01 of the North Dakota Century Code, relating to the number of acres of property in a real estate mortgage which is governed by the Short-Term Mortgage Redemption Act.

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

SECTION 1. AMENDMENT. Section 32-19.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-01. Mortgage may provide for foreclosure under chapter. The parties to a real estate mortgage upon property involving an area not to exceed ~~ten~~ forty acres [~~16.19~~ 64.76 hectares] may provide in said mortgage that upon default in the conditions of the mortgage the mortgage may be foreclosed as provided in this chapter.

Approved March 31, 1985

CHAPTER 376

HOUSE BILL NO. 1198
(Committee on Industry, Business and Labor)
(At the request of the Industrial Commission)

REDEMPTION UNDER THE SHORT-TERM MORTGAGE REDEMPTION ACT

AN ACT to amend and reenact sections 32-19.1-04, 32-19.1-04.1, 32-19.1-05 and 35-22-20 of the North Dakota Century Code, relating to the redemption of real property under the short-term mortgage redemption act; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 32-19.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-04. Redemption period under ~~chapter~~. All real property sold as provided in section 32-19-08 or 35-22-08 upon foreclosure of a mortgage executed pursuant to this chapter may be redeemed within the time period specified in this chapter and in such manner as is prescribed by chapter 28-24. The period for redemption under this chapter shall be as follows:

1. If the amount claimed due upon such mortgage at the date of the notice before foreclosure is more than sixty-six and two-thirds percent of the original indebtedness secured by the mortgage, the redemption period shall be six months.
2. In any other case, the redemption period shall be one year.

SECTION 2. AMENDMENT. Section 32-19.1-04.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-04.1. Redemption period to ~~commence upon filing of summons and complaint~~ Commencement of redemption period. In the event of foreclosure under this chapter, the period of redemption will commence to run at the time of the filing of the summons and complaint in the office of the clerk of the district court or at the

time of the first publication of the notice of foreclosure by advertisement, unless it is determined by the district court that the mortgagee is not entitled to judgment, and in no event will the final date for redemption be earlier than sixty days after the sheriff's sale.

SECTION 3. AMENDMENT. Section 32-19.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.1-05. Notice before foreclosure to state time for redemption. When the notice before foreclosure required by section 32-19-20 or 35-22-03 is served upon the title owner of record of the real estate described in the mortgage, such notice shall, where foreclosure is authorized under this chapter, contain a statement as to the time for redemption after the sheriff's sale. Failure to include such a statement in the notice shall not invalidate the notice before foreclosure, but the redemption period shall be one year.

SECTION 4. AMENDMENT. Section 35-22-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-22-20. Redemption ~~within one year~~ - Who may redeem - Notice to officer making sale. The property sold may be redeemed ~~within one year from the day of sale~~ in like manner and with the same effect as is provided for redemption of real property sold upon execution in chapter 28-24 so far as the same may be applicable by:

1. The mortgagor or his successor in interest of the whole or any part of the property.
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

Such creditor is termed a redemptioner and has all the rights of a redemptioner under that chapter, and the mortgagor or his successor in interest has all the rights of the judgment debtor and his successor in interest as provided therein. The notice of redemption required to be given to the sheriff under that chapter, in foreclosure by advertisement, may be given to the officer making the sale.

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

Approved March 14, 1985

CHAPTER 377

HOUSE BILL NO. 1383
(Martinson)

TRUSTEE IN APARTMENT FORECLOSURE

AN ACT to amend and reenact section 32-19.2-01 of the North Dakota Century Code, relating to the appointment of a trustee on application of the mortgagee in any action for the foreclosure of a real estate mortgage.

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

SECTION 1. AMENDMENT. Section 32-19.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19.2-01. Appointment of trustee. On application of the mortgagee, in any action for the foreclosure of a real estate mortgage upon any commercial building, including apartments of ~~five~~ two or more units, the court, upon ten days' notice to the mortgagor, may, upon good cause being shown, appoint a trustee to take possession of the premises. Any person, other than the mortgagee, or its agents or employees, may act as trustee if the court deems them qualified.

Approved March 27, 1985

CHAPTER 378

SENATE BILL NO. 2085
(Legislative Council)
(Interim Judiciary "B" Committee)

PERSONAL PROPERTY FORECLOSURE

AN ACT to create and enact two new sections to chapter 32-20 of the North Dakota Century Code, relating to the trial of a special answer when foreclosing on personal property; to amend and reenact sections 32-20-02 and 32-20-05 of the North Dakota Century Code, relating to the procedure used to seize the property when foreclosing on personal property and to the contents of the judgment; and to repeal section 32-20-03 of the North Dakota Century Code, relating to the form of the warrant to seize the property when foreclosing on personal property.

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

* SECTION 1. AMENDMENT. Section 32-20-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-20-02. Warrant to seize property - Issuance - Service. If the plaintiff is not in possession of the property, the ~~clerk~~ judge of the court in which the action is commenced, at the time of the commencement of the action or at any time before judgment, may issue a warrant commanding the sheriff to seize and safely keep the same to abide the final judgment in the action. ~~Such~~ The warrant may be issued upon the filing of a:

1. A verified complaint with the clerk setting forth a cause of action in favor of the plaintiff and against the defendant for the foreclosure of a lien upon the property possession of which is sought to be obtained. The sheriff immediately must execute the warrant by seizing the property and holding the same until disposed of according to law; and
2. An affidavit stating that the affiant knows or has good reason to believe that the seizure of the property is necessary to prevent removal, destruction, or concealment of the property or loss of the creditor's proprietary interests therein.

* NOTE: Section 32-20-02 was also amended by section 80 of Senate Bill No. 2086, chapter 82.

The sheriff shall without delay serve copies of the warrant, affidavit, and undertaking upon the defendant in the same manner as the summons. If the defendant has not filed a special answer, pursuant to this chapter, within ten days after notice of the issuance of a warrant or if in the trial of the special answer the court finds for the plaintiff, the sheriff shall seize the property of the defendant. The sheriff shall attach perishable property or property the judge has determined, when issuing a warrant, is likely to be removed, destroyed, or concealed if the property is not attached without delay, notwithstanding the right of the defendant to file a special answer.

SECTION 2. A new section to chapter 32-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Special answer to warrant - Trial. Within ten days after notice of the issuing of a warrant to seize the defendant's property, the defendant may, by special answer, deny the existence, at the time of the making of the affidavit, of the material facts stated therein, and may assert undue hardship as a defense. The issue so raised must be tried by the court before the trial of the action, and the burden of proof is upon the plaintiff. If the defendant has made an assignment for the benefit of the defendant's creditors, the defendant's assignee may answer and defend pursuant to this section.

SECTION 3. A new section to chapter 32-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Trial of special answer. In making its determination of the issue raised by the special answer, the court shall consider any undue hardship on the defendant that would result from an issuance of the warrant. If the court finds for the defendant, the judge shall tax the defendant's costs of such trial, and shall enter an order dismissing the warrant or that the property attached be delivered to the defendant; and the jury or the court shall, on the trial of the action or thereafter, assess the damages sustained by the defendant by reason of the taking and detention or sale of the property attached or by reason of any injury thereto. The same, together with the costs so taxed, must be a setoff to the plaintiff's demand, and if in excess of it, or the plaintiff fails to recover, the defendant shall have judgment for the amount due. If the court on the trial of such special issue finds for the plaintiff, the judge shall tax the plaintiff's costs of such trial, and the amount so taxed must, if the plaintiff recovers, be taxed by the clerk as disbursement in the action. If the defendant or the defendant's assignee recovers judgment in the action, said costs and the judgment must be offset.

SECTION 4. AMENDMENT. Section 32-20-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-20-05. What judgment must state. In an action for the foreclosure of a lien on personal property, judgment in favor of the

plaintiff must specify the amount due on the lien and must direct a sale of the property to satisfy the same and the costs, by a person appointed thereby, or by an officer designated therein, in the manner provided for the sale of personal property under execution, and the application by him of the proceeds of the sale, less his fees and expenses, to the payment of the judgment and costs. It also may provide for the payment of the surplus to the owner of the chattel and for the safekeeping of the surplus, if necessary, until it is claimed by him. If the defendant upon whom the summons is served personally is liable for the amount of the lien, or for any part thereof, judgment may be entered against him accordingly. A judgment for either the defendant or plaintiff must specify any amounts awarded pursuant to section 3 of this Act.

* SECTION 5. REPEAL. Section 32-20-03 of the North Dakota Century Code is hereby repealed.

Approved March 22, 1985

* NOTE: Section 32-20-03 was amended by section 81 of Senate Bill No. 2086, chapter 82.

CHAPTER 379

HOUSE BILL NO. 1066
(Legislative Council)
(Interim Industry, Business and Labor Committee)

VOLUNTARY SERVICE OR PARTIAL PAYMENT OF CLAIMS

AN ACT to amend and reenact sections 32-39-01, 32-39-02, and 32-39-03 of the North Dakota Century Code, relating to voluntary service or partial payment of claims.

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

SECTION 1. AMENDMENT. Section 32-39-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-39-01. Voluntary service or partial payment not admissible. No voluntary service or partial payment of a claim, including a claim of medical malpractice, against any person based on alleged liability of that person for injury or damage arising out of any occurrence ~~shall~~ may be construed as an admission of fault or liability. Such Evidence of the service or payment shall not be is not admissible in any action as evidenece for the purpose of determining the amount of any judgment or the liability of any person with respect to ~~such the~~ occurrence.

SECTION 2. AMENDMENT. Section 32-39-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-39-02. Voluntary service or payment not admission of liability. No receipt of a voluntary service or partial payment of a claim, including a claim of medical malpractice, against any person based on alleged liability of that person for injury or damage arising out of any occurrence ~~shall~~ may be construed as a waiver or release of the claim by the person receiving such the service or payment, unless a written waiver or release is given. No receipt, provision, or payment of a voluntary service or partial payment of a claim ~~shall~~ may reduce the amount of damages which may be pleaded and proved in a court proceeding between the parties.

* SECTION 3. AMENDMENT. Section 32-39-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 32-39-03 was also amended by section 84 of Senate Bill No. 2086, chapter 82.

32-39-03. Agreement by parties - Credit for service or payment. Upon final voluntary compromise settlement of ~~the~~ any claim, including a claim of medical malpractice, against any person based on alleged liability of that person for injury or damage arising out of any occurrence, the parties may make any agreement they desire concerning previous voluntary services or partial payments of the claim. If the claim is tried in a court, after entry of judgment involving the claim, the value of any such previous voluntary service or partial payment shall be treated as a credit against the judgment and shall of the claim must be deducted from the amount of the judgment if the value thereof was included in the assessment of damages contained in the judgment. If, after entry of judgment involving the claim, it ~~shall be~~ is determined by the judgment that the amount of injury or damages is less than the value of the previous services and voluntary payments already made, the provider of the services or payer of the payments shall have has no right of action for the recovery of amounts by which the voluntary services or payments exceed such the final court judgment.

Approved March 14, 1985

LABOR AND EMPLOYMENT

CHAPTER 380

SENATE BILL NO. 2352
(Senators Holmberg, Olson, Kilander)
(Representatives Martinson, A. Hausauer, Rydell)

STATE AND POLITICAL SUBDIVISION EMPLOYEES RELATIONS ACT

AN ACT to provide a State and Political Subdivision Employees Relations Act; and to provide a penalty.

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

SECTION 1. Definitions. In this Act unless the context otherwise requires:

1. "Agency" means any department, institution, board, or other similar body of state government, or any political subdivision within the state.
2. "Appointing authority" means the individuals in any agency who have authority to fill job vacancies.
3. "Employee" means any person, whether employed, appointed, or under contract, providing services for the state, county, city, or other political subdivision, for which compensation is paid. "Employee" also includes a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision. "Employee" does not include:
 - a. A person elected to public office in the state or in a political subdivision;
 - b. A member of the legislative council staff;
 - c. A person holding an appointive statutory office;
 - d. One deputy or principal assistant for each elected official or appointive statutory official;
 - e. One secretary for each elected or appointive statutory official; and
 - f. All members of the governor's staff.

4. "Organization" means any organized group of individuals working together for the common good of public employees and government.

SECTION 2. Political activities. Except when on duty or acting in an official capacity and except as otherwise provided by state or federal law, no employee shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

SECTION 3. Membership in organizations. No employee may be denied the right to be a member of an organization of employees or be intimidated or coerced in a decision to communicate or affiliate with an organization. Public employees shall have the right to request payroll deduction of dues for membership in an organization of employees.

SECTION 4. Violations for misuse reported by employee - Reprisals prohibited - Furnishing false information.

1. An employee may, without fear of reprisal, report in writing to their respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:
 - a. A job related violation of state or federal law.
 - b. A job related violation of state or federal agency rules.
 - c. The job related misuse of public resources.
2. For having made a report under subsection 1 no employee will:
 - a. Be dismissed from employment.
 - b. Have salary increases of employment-related benefits withheld.
 - c. Be transferred or reassigned.
 - d. Be denied a promotion which the employee otherwise would have received.
 - e. Be demoted.
 - f. Be discriminated against in any term or condition of employment.
3. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee dismissed under this

subsection may appeal first to the state personnel board and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the state personnel board.

SECTION 5. Prohibited acts. No agency, appointing authority, organization or employee shall directly or indirectly:

1. Require or coerce any agency employee to participate in any way in any activity or undertaking unless the activity or undertaking is related to the performance of official duties.
2. Require or coerce any agency employee to make any report concerning any activities or undertaking unless the activity or undertaking is related to the performance of official duties.
3. Require any agency employee to invest or contribute earnings in any manner or for any purpose, except for participation in the employees retirement program.
4. Restrict or attempt to restrict after-working-hour statements, pronouncements, or other activities of any agency employee not otherwise prohibited by law which pertains to matters of public concern, if the employee does not purport to speak or act in an official capacity.

SECTION 6. Penalties or threats prohibited. No employee shall suffer a penalty or the threat of a penalty because that employee exercised rights under this Act.

SECTION 7. Other rights or legal remedies unimpaired. Nothing in this Act shall disparage, impair, or limit any other right or legal remedy of an employee.

SECTION 8. Penalty. A violation of the provisions in this Act is a class B misdemeanor.

Approved April 11, 1985

LIENS

CHAPTER 381

SENATE BILL NO. 2084
(Legislative Council)
(Interim Judiciary "B" Committee)

STATUTORY LIEN FORECLOSURE — PLEDGE BY SALE

AN ACT to amend and reenact sections 35-01-29 and 35-06-11 of the North Dakota Century Code, relating to foreclosure of statutory liens on personal property and the enforcement of a pledge by sale.

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

SECTION 1. AMENDMENT. Section 35-01-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-01-29. Foreclosure of statutory lien on personal property. Upon default in the payment of a debt secured by a statutory lien on personal property, unless a different procedure is otherwise expressly prescribed by law, such lien may be foreclosed as follows:

- 1- If such lien is dependent upon possession of the personal property, it may be foreclosed in the same manner as a pledge of personal property.
- 2- If such lien is not dependent upon possession of the personal property, it may be foreclosed in the manner provided for the foreclosure of a security interest in personal property, and the lien claimant shall be entitled to possession of the property for the purpose of foreclosure.

Such lien also may be foreclosed by action as prescribed in chapter 32-20.

SECTION 2. AMENDMENT. Section 35-06-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-06-11. Pledge enforced - Sale when performance due. When performance of the act for which a pledge is given is due in whole or in part, the pledgee may collect what is due him by a sale of the property pledged, subject to the rules and exceptions prescribed in this chapter and in section 41-09-50.

Approved March 22, 1985

CHAPTER 382

HOUSE BILL NO. 1297
(Wold)

PREREQUISITES FOR MORTGAGE RECORDING

AN ACT to amend and reenact section 35-03-04 of the North Dakota Century Code, relating to the prerequisites for recordation of a mortgage.

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

SECTION 1. AMENDMENT. Section 35-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-03-04. Prerequisites for recordation - Post-office address of mortgagee or assignee - Description of indebtedness. No mortgage of real property shall be received for record by the register of deeds unless it contains the post-office address of the mortgagee and a complete description of the indebtedness secured as to the amount, rate of interest, and when and where due and an adequate statement as to the amount of indebtedness and the terms of interest. No assignment of a mortgage on real property which does not contain the post-office address of the assignee shall be received for record.

Approved March 14, 1985

CHAPTER 383

HOUSE BILL NO. 1596
(Representatives A. Williams, R. Solberg, Schindler)
(Senators Freborg, Moore, Dotzenrod)

CROP LIEN LIMITATIONS

AN ACT to create and enact a new section to chapter 35-05 of the North Dakota Century Code, relating to limitations on crop liens; and to amend and reenact subsection 1 of section 41-09-17 and subsection 2 of section 41-09-42 of the North Dakota Century Code, relating to after-acquired property and the duration of financing statement filings.

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

SECTION 1. A new section to chapter 35-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Crop liens - Limitations - Exceptions. A security interest upon crops shall attach only to the crop next maturing after the delivery of the security agreement. The provisions of this section shall not apply to liens by contract given to secure the purchase price or the rental of land upon which the crops covered by the lien are to be grown.

SECTION 2. AMENDMENT. Subsection 1 of section 41-09-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as provided in subsection 2 and in section 1 of this Act, a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

SECTION 3. AMENDMENT. Subsection 2 of section 41-09-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Except as provided in subsection 6 and section 1 of this Act, a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is

filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

Approved March 31, 1985

CHAPTER 384

SENATE BILL NO. 2292
(Senators Tallackson, David)
(Representative Wald)

UNPAID EARNED INSURANCE PREMIUM LIENS

AN ACT to amend and reenact sections 11-18-14, 35-20-16, and 35-21-01 of the North Dakota Century Code, relating to the destruction of documents by the register of deeds and unpaid earned insurance premium liens.

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

* SECTION 1. AMENDMENT. Section 11-18-14 of the North Dakota Century Code is hereby amended and reenacted to read 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 his office, and destroy, all seed liens, labor liens, stallion liens, chattel mortgages, threshing liens, crop production liens, combining 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 cause of action has accrued and which cause of action is more than ten years old. At the time of destroying said 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 35-20-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-20-16. Procedure to obtain unpaid earned property or casualty insurance premium lien - Filing. Any person entitled to an unpaid earned property or casualty insurance premium lien, within ninety days after cancellation of the policy is effective termination of coverage, must file in the office of the register of deeds of the county or counties in which the property covered by the policy is located and with any loss payee named in the policy, a verified statement in writing stating all of the following:

1. The name of the policyholder.

* NOTE: Section 11-18-14 was also amended by section 21 of Senate Bill No. 2086, chapter 82.

2. The nature and quantity of insurance coverage provided.
3. The amount of unpaid earned premium.
4. A description of the property covered by the insurance and subject to the lien.
5. That a lien is claimed upon the property described.

SECTION 3. AMENDMENT. Section 35-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-21-01. Release of lien by undertaking authorized. When any mechanic's lien, garage storage lien, repairman's lien, seed lien, sugar beet production lien, crop production lien, threshing lien, ~~farm laborer's~~ unpaid earned insurance premium lien, or miner's lien is filed against the real property or personal property of a resident of this state, the property affected may be released by an undertaking in the manner provided in this chapter.

Approved March 27, 1985

CHAPTER 385

SENATE BILL NO. 2433
(Senator Waldera)
(Representatives Goetz, Wald)

OIL AND PIPELINE LIEN FILING

AN ACT to amend and reenact sections 35-24-11, 35-24-12, subsections 1, 2, and 3 of section 35-24-13, and section 35-24-22 of the North Dakota Century Code, relating to filing oil and pipeline liens with the registers of deeds.

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

SECTION 1. AMENDMENT. Section 35-24-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-24-11. Contents and filing of statement of lien. Every person claiming a lien under this chapter shall file with the ~~clerk of district court register of deeds~~ of the county in which ~~such the~~ leasehold, or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold, or pipeline, if known, the name of the claimant and ~~his~~ the claimant's mailing address, a description of the leasehold, or pipeline, and if the claimant ~~be is~~ a claimant under section 35-24-04, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. ~~Said~~ The statement of lien must be filed within six months after the date on which the claimant's labor was last performed or ~~his~~ material or services were last furnished under a single contract as provided for in section 35-24-10.

* SECTION 2. AMENDMENT. Section 35-24-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-24-12. Recordation of statement of lien. Immediately upon receipt of the statement of lien ~~mentioned provided for~~ in section 35-24-11, the clerk of the district court shall give such statement a file number and shall file the same and in addition shall enter a record of the same in a book kept by him for that purpose, to be called "Oil and Gas Lien Record", which shall be ruled off into separate columns with headings as follows: "File Number", "When Filed",

* NOTE: Section 35-24-12 was also amended by section 14 of Senate Bill No. 2116, chapter 336, and amended by section 23 of Senate Bill No. 2275, chapter 337.

"Name of Owner", "Name of Claimant", "Amount Claimed", "Description of", and "Remarks", and the clerk of the district court shall make the proper entries under each column. The fee to be charged by the clerk of the district court for the filing of such lien statement shall be one dollar register of deeds shall record the statement as a lien against the real property interest which is subject to the lien pursuant to section 35-24-03.

SECTION 3. AMENDMENT. Subsections 1, 2, and 3 of section 35-24-13 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Whenever any lien or liens shall be fixed or attempted to be fixed under the provisions of this chapter then the owner of the property on which the lien or liens are claimed or the contractor or subcontractor through whom such lien or liens are claimed, or either of them, may file a bond with the clerk of the district court register of deeds of the county in which the property is located as herein provided. Such bond shall describe the property on which lien or liens are claimed, shall refer to the lien or liens claimed in a manner sufficient to identify them, shall be in double the amount of the claimed lien or liens referred to, and shall be payable to the party or parties claiming same. Such bond shall be executed by the party filing same as principal and by a corporate surety authorized under the laws of this state to execute such bonds as surety and shall be conditioned substantially that the principal and surety will pay to the obligees named or their assigns the amounts of the liens so claimed by them with all costs in the event same shall be proven to be liens on such property.
2. Upon the filing of such bond the clerk of the district court register of deeds shall send a notice thereof, together with a copy of the bond, to all obligees named therein, by registered or certified mail addressed to such obligees at the address set forth in their respective claims for lien.
3. Such ~~bond, when filed, and such~~ notice, when mailed, shall be recorded by the clerk of the district court in filed for record by the oil and gas lien records register of deeds, and any purchaser or lender may rely upon the record of such bond and notice in acquiring any interest in said property and shall absolutely be protected thereby.

SECTION 4. AMENDMENT. Section 35-24-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-24-22. Assignment of liens and actions. All claims for liens and likewise all actions to recover therefor under this chapter shall be assignable so as to vest in the assignee all rights and remedies

herein given subject to all defenses thereto that might be raised if such assignment had not been made. Where a statement of lien has been filed as herein provided, such assignment may be made by an entry on the same page of the oil and gas lien record containing a record of the lien signed by the claimant or his lawful representative and attested by the clerk of the district court or such assignment may be made by a separate an instrument in writing, filed with the register of deeds.

Approved March 30, 1985

CHAPTER 386

SENATE BILL NO. 2110
(Olson)

WELL OR PIPELINE LIEN FORECLOSURE COSTS

AN ACT to amend and reenact section 35-24-19 of the North Dakota Century Code, relating to the allowance of attorney's fees in well or pipeline lien foreclosures.

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

SECTION 1. AMENDMENT. Section 35-24-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-24-19. Allowance of reasonable attorney's fee in foreclosure. In any action brought to enforce a lien prescribed by this chapter, the party for whom judgment is rendered shall be entitled to recover a reasonable attorney's fee, to be fixed by the court, which shall be taxed as costs in the action. No costs may be taxed against the owner when the owner has paid into court, at least ten days before trial, the maximum amount of the owner's liability as limited under section 35-24-07.

Approved March 22, 1985

LIVESTOCK

CHAPTER 387

SENATE BILL NO. 2339
(D. Meyer)

LIVESTOCK SANITARY BOARD OFFICE TERM

AN ACT to amend and reenact section 36-01-01 of the North Dakota Century Code, relating to the term of office of members of the state livestock sanitary board.

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

SECTION 1. AMENDMENT. Section 36-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-01. State livestock sanitary board - Appointment - Terms - Qualifications. The state livestock sanitary board shall consist of seven members appointed by the governor for terms of seven years each with their terms of office so arranged that one term, and only one, shall expire on the first day of August in each year. No person may be appointed to more than two seven-year terms on the board. Each member of such board shall be a qualified elector of this state. Each member of the board, immediately after his appointment shall take the oath of office required of civil officers. One member of said board shall be a person actively engaged and financially interested in the commercial beef cattle industry and shall represent said industry on said board; one member of said board shall be a person actively engaged and financially interested in the registered purebred beef cattle industry and shall represent said industry on said board; one member of said board shall be a person actively engaged and financially interested in the dairy cattle industry and shall represent said industry on said board; one member of said board shall be a person actively engaged and financially interested in the swine industry and shall represent said industry on said board; one member of said board shall be a person actively engaged and financially interested in the sheep industry and shall represent said industry on said board; and two members of said board shall be competent veterinarians who are graduates of a veterinary course in a recognized college or university. Vacancies occurring prior to the expiration of terms of office shall be filled by appointment by the governor and shall be for the balance of the unexpired term. Recommendations for appointment of members to said board as constituted under this

section may be made to the governor by the following associations for the following stated industries, to wit: by the North Dakota stockmen's association for the members representing commercial beef cattle; by the various registered purebred beef cattle associations for the member representing the registered purebred beef cattle; by the various dairy breed associations for the member representing dairy cattle; by the North Dakota swine breeders' association for the member representing swine; and by the North Dakota wool growers' association for the member representing sheep, and by the state veterinary medical association for the two veterinarian members and by such other associations within this state representing livestock industries as the governor may permit. Two recommendations shall be submitted for each office to be filled.

Approved March 22, 1985

CHAPTER 388

HOUSE BILL NO. 1264
(Representatives R. Anderson, Knudson, Murphy)
(Senators Maixner, Moore, D. Meyer)

LIVESTOCK DEALERS AND AGENTS

AN ACT to amend and reenact section 36-04-03 of the North Dakota Century Code, relating to livestock dealers and dealer's agents.

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

SECTION 1. AMENDMENT. Section 36-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-03. Dealer's license required - Agent licensed designation and licensure - Suitability for licensure - Liability of owner for agent's acts.

1. All dealers ~~shall~~ and agents must be licensed as provided in this chapter.
2. No agent shall act for any ~~such~~ dealer unless the dealer is licensed and has designated such agent ~~or agents~~ to act in ~~his~~ the dealer's behalf and has notified the department of ~~such~~ the appointment in ~~his~~ the dealer's application for a license or in a separate written instrument and requested the department to issue to such agent ~~or agents~~ an agent's ~~identification card license~~ in such form as may be prescribed by the commissioner.
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, ~~as such,~~ shall 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 shall be accountable and responsible for all the acts of ~~his~~ a designated agent ~~or agents.~~

Approved March 14, 1985

CHAPTER 389

SENATE BILL NO. 2044
(Legislative Council)
(Interim Agriculture Committee)

AUTHORITY OVER LIVESTOCK DEALERS AND AUCTION MARKETS

AN ACT to create and enact two new sections to chapter 36-04 and three new sections to chapter 36-05 of the North Dakota Century Code, relating to livestock dealers and auction markets, cease and desist authority, injunctions, and investigations and hearings; and to amend and reenact sections 36-04-10, 36-05-06, and 36-05-13 of the North Dakota Century Code, relating to livestock dealers and auction markets, licenses, and hearings.

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

SECTION 1. AMENDMENT. Section 36-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-10. Department may refuse to grant and may revoke
Refusal or revocation of license. The department ~~may decline shall~~
refuse to grant a license, or may shall revoke a license which it
has granted, when it is satisfied that:

1. The applicant or licensee has violated any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. The applicant or licensee has been guilty of deceit, fraud, dishonesty, forgery, or theft as a dealer in livestock or wool, or in dealing therein;
3. The applicant made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
4. The applicant has failed to keep and maintain suitable records, which disclose all purchases and sales of livestock, or has refused, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any and all of such records relating to ~~his~~ the dealer's business; or

5. The applicant has failed or refused to furnish the information required under the terms of this chapter and as prescribed by the department.

Terminal markets, auction markets, and weigh stations are subject to the provisions of this section.

SECTION 2. A new section to chapter 36-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cease and desist authority. The commissioner may issue an order to cease and desist when, in the opinion of the commissioner, any person within the state is taking or planning any action which is or may be in violation of this chapter. If an order is granted, the commissioner shall conduct a hearing within thirty days of the issuance of the order to determine whether the actions of the person named in the order violated or would have violated this chapter. The commissioner shall, after the hearing but not later than forty-five days after the issuance of the order, revoke the order or make it permanent, as the facts require.

SECTION 3. A new section to chapter 36-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Investigation of dealers - Hearing conducted to determine whether license should be issued or revoked.

1. The department upon its own motion or upon a complaint by any person may enter into an investigation of the sales and transactions of any dealer and of the conditions under which its business is conducted. The department may conduct a hearing to determine whether the license of any dealer should be revoked or whether the application of the dealer for an original or renewal license should be denied.
2. The department shall conduct an investigation of an alleged violation of this chapter when:
 - a. A complaint, allegation, or order to show cause, alleging an act which would constitute a violation of this chapter, is issued by or sought by the packers and stockyards administration of the United States;
 - b. The department has information sufficient to form a reasonable belief that a violation of this chapter has occurred; or
 - c. The department has received a sworn statement, affidavit, or other evidence, from any person alleging a violation of this chapter.

3. The department shall conduct a hearing when, pursuant to an investigation, probable cause exists that a violation of this chapter has occurred.
4. The department shall conduct an audit, or cause an audit to be conducted, when probable cause exists that any dealer has violated subdivision a, b, c, or d of subsection 2 of section 36-04-04 or any of the financial provisions of this chapter.

SECTION 4. AMENDMENT. If Senate Bill No. 2043 is not approved by the forty-ninth legislative assembly or does not become effective, then section 36-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-06. Investigation of auction market - Hearing conducted to determine whether license should be issued or revoked.

1. The livestock sanitary board upon its own motion or upon a complaint by any person, may enter into an investigation of the sales and transactions of any livestock auction market and of the conditions under which its business is conducted. The livestock sanitary board when it deems it necessary, may conduct a hearing to determine whether the license of any auction market should be revoked or whether the application of the owner or operator of a livestock auction market for an original or renewal license should be denied.
2. The board shall conduct an investigation of an alleged violation of this chapter when:
 - a. A complaint, allegation, or order to show cause, alleging an act which would constitute a violation of this chapter, is issued by or sought by the packers and stockyards administration of the United States;
 - b. The board has information sufficient to form a reasonable belief that a violation of this chapter has occurred; or
 - c. The board has received a sworn statement, affidavit, or other evidence from any person alleging a violation of this chapter.
3. The board shall conduct a hearing to determine whether a violation has occurred when, pursuant to an investigation, probable cause exists that a violation of this chapter has occurred.
4. The board shall conduct an audit, or cause an audit to be conducted, when probable cause exists that any livestock auction market has violated any of the financial provisions of this chapter, when it reasonably appears

that the liabilities of the livestock auction market exceed its assets, or when the auction market has refused to pay a proper claim without reasonable cause.

* SECTION 5. AMENDMENT. Section 36-05-06 of the North Dakota Century Code as contained in section 5 of Senate Bill No. 2043, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

36-05-06. Investigation of auction market - Hearing conducted to determine whether license should be issued or revoked.

1. The commissioner upon the commissioner's own motion or upon a complaint by any person may enter into an investigation of the sales and transactions of any livestock auction market and of the conditions under which its business is conducted. The commissioner when the commissioner deems it necessary, may conduct a hearing to determine whether the license of any auction market should be revoked or whether the application of the owner or operator of a livestock auction market for an original or renewal license should be denied.
2. The commissioner shall conduct an investigation of an alleged violation of this chapter when:
 - a. A complaint, allegation, or order to show cause, alleging an act which would constitute a violation of this chapter, is issued by or sought by the packers and stockyards administration of the United States;
 - b. The commissioner has information sufficient to form a reasonable belief that a violation of this chapter has occurred; or
 - c. The commissioner has received a sworn statement, affidavit, or other evidence from any person alleging a violation of this chapter.
3. The commissioner shall conduct a hearing to determine whether a violation has occurred when, pursuant to an investigation, probable cause exists that a violation of this chapter has occurred.
4. The commissioner shall conduct an audit, or cause an audit to be conducted, when probable cause exists that any livestock auction market has violated any of the financial provisions of this chapter, when it reasonably appears that the liabilities of the livestock auction market exceed its assets, or when the auction market has refused to pay a proper claim without reasonable cause.

SECTION 6. AMENDMENT. If Senate Bill No. 2043 is not approved by the forty-ninth legislative assembly or does not become

* NOTE: Section 36-05-06 was also amended by section 5 of Senate Bill No. 2043, chapter 392.

effective, then section 36-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

~~36-05-13. Use of fees collected by livestock sanitary board - Grounds for refusal or revocation of license - Procedure on revocation and on default of licensee. All fees collected by the livestock sanitary board under the provisions of this chapter shall must be credited to the general fund of the state treasury. A license to operate a livestock auction market may must be refused or revoked for any of the reasons specified in section 36-04-10, and the provisions of section 36-04-11 shall govern the procedure under which a hearing shall be had before the livestock sanitary board to determine whether such license shall be revoked or subsection 2 of section 36-04-04. When the holder of a license issued under the provisions of this chapter shall default defaults in any of the conditions of any bond filed with the livestock sanitary board by such the licensee this, the board shall will become trustee of such bond and the provisions of sections 36-04-12 through 36-04-19 shall govern the procedure to be followed.~~

* SECTION 7. AMENDMENT. Section 36-05-13 of the North Dakota Century Code as contained in section 7 of Senate Bill No. 2043, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

~~36-05-13. Use of fees - Grounds for refusal or revocation of license - Procedure on default of licensee. All fees collected by the commissioner and the livestock sanitary board under this chapter must be credited to the general fund of the state treasury. A license to operate a livestock auction market must be refused or revoked for any of the reasons specified in section 36-04-10 or subsection 2 of section 36-04-04. When the holder of a license issued under this chapter defaults in any of the conditions of any bond filed with the commissioner by the licensee, the commissioner will become trustee of the bond and sections 36-04-12 through 36-04-19 govern the procedure to be followed.~~

SECTION 8. If Senate Bill No. 2043 is not approved by the forty-ninth legislative assembly or does not become effective, then a new section to chapter 36-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cease and desist authority. The livestock sanitary board may issue an order to cease and desist when, in the opinion of the board or its executive officer, any auction market within the state is taking or planning any action which is or may be in violation of this chapter. If an order is granted, the board shall conduct a hearing within thirty days of the issuance of the order to determine whether the actions of the person named in the order violated or would have violated this chapter. The board shall, after the hearing but not later than forty-five days after the issuance of the order, revoke the order or make it permanent, as the facts require.

* NOTE: Section 36-05-13 was also amended by section 7 of Senate Bill No. 2043, chapter 392.

SECTION 9. If Senate Bill No. 2043 is approved by the forty-ninth legislative assembly and becomes effective, then a new section to chapter 36-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cease and desist authority. The commissioner may issue an order to cease and desist when, in the opinion of the commissioner, or any auction market within the state is taking or planning any action which is or may be in violation of this chapter. If an order is granted, the commissioner shall conduct a hearing within thirty days of the issuance of the order to determine whether the actions of the person named in the order violated or would have violated this chapter. The commissioner shall, after the hearing but not later than forty-five days after the issuance of the order, revoke the order or make it permanent, as the facts require.

SECTION 10. If Senate Bill No. 2043 is not approved by the forty-ninth legislative assembly or does not become effective, then a new section to chapter 36-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Injunctive authority. The livestock sanitary board may, when it believes any auction market or person is violating this chapter or is pursuing a course of action which may lead to a violation of this chapter, seek an order from the district court of Burleigh County to enjoin the prohibited act.

SECTION 11. If Senate Bill No. 2043 is approved by the forty-ninth legislative assembly and becomes effective, then a new section to chapter 36-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Injunctive authority. The commissioner may, when in the commissioner's belief any auction market or person is violating this chapter or is pursuing a course of action which may lead to a violation of this chapter, seek an order from the district court of Burleigh County to enjoin the prohibited act.

Approved March 22, 1985

CHAPTER 390

SENATE BILL NO. 2045
(Legislative Council)
(Interim Agriculture Committee)

LIVESTOCK DEALER AND AUCTION MARKET RECORDS

AN ACT to create and enact a new section to chapter 36-04 and a new section to chapter 36-05 of the North Dakota Century Code, relating to requiring livestock dealers and livestock auction markets to file releases of financial records.

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

SECTION 1. A new section to chapter 36-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records release required with application for licensure. A dealer shall file, together with the license application, a release authorizing the access of the commissioner to financial records of the dealer held by financial institutions, accountants, and other sources. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing a dealer or in the course of an investigation of a dealer when instituted due to a complaint against the dealer or when based upon evidence sufficient to establish probable cause of a violation of this chapter or the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.]. Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

SECTION 2. If Senate Bill No. 2043 does not become effective, a new section to chapter 36-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records release required with application for licensure. A livestock auction market shall file, together with the license application, a release authorizing the access of the livestock sanitary board or its agent to financial records of the livestock auction market held by financial institutions, accountants, and other sources. The release must be in a form approved by the board. The board or its

agent may use the release in the course of licensing or relicensing a livestock auction market or in the course of an investigation of a livestock auction market when instituted due to a complaint against the market or when upon evidence sufficient to establish probable cause of a violation of this chapter or the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.]. Any information gained through the use of a release is confidential. The board may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

SECTION 3. If Senate Bill No. 2043 becomes effective, a new section to chapter 36-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records release required with application for licensure. A livestock auction market shall file, together with the license application, a release authorizing the access of the commissioner to financial records of the livestock auction market held by financial institutions, accountants, and other sources. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing a livestock auction market or in the course of an investigation of a livestock auction market when instituted due to a complaint against the market or when based upon evidence sufficient to establish probable cause of a violation of this chapter or the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.]. Any information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to the attorney general, other state agencies, and any prosecuting officials requiring the information for use in pursuit of official duties.

Approved March 22, 1985

CHAPTER 391

SENATE BILL NO. 2046
(Legislative Council)
(Interim Agriculture Committee)

LIVESTOCK DEALER BOND

AN ACT to amend and reenact section 36-04-05 of the North Dakota Century Code, relating to bond requirements for livestock dealers.

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

SECTION 1. AMENDMENT. Section 36-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-04-05. Dealer to file bond with department - Additional bond may be required. Each applicant for a license under the provisions of this chapter shall file with ~~his~~ the application a bond issued by an approved surety company. The department ~~shall~~ must be named as the obligee in each ~~such~~ bond but the bond ~~shall~~ 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 ~~his~~ the dealer's agent. ~~Such~~ The bond ~~shall~~ must be conditioned for:

1. The faithful performance by the dealer of ~~his~~ the duties as such;
2. The compliance by the dealer 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; and
4. The full protection of any person who deals with ~~such~~ the dealer.

Each ~~such~~ bond ~~shall~~ must cover the license period of the dealer or such greater time as the commissioner may prescribe and ~~shall~~ must be approved as to amount, form, and sufficiency by the department. The minimum amount of bond ~~shall~~ be ~~five is ten~~ thousand dollars, and ~~shall~~ must be for ~~such~~ 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 ~~the provisions~~ of this section, the applicant may file with the department the dealer's bond filed by ~~him~~ that applicant with the United States department of agriculture and in effect pursuant to ~~the provisions~~ of 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 ~~shall be~~ is a financially responsible, disinterested person satisfactory to the commissioner. The minimum amount of such bond ~~shall be five~~ is ten thousand dollars, unless the department ~~shall determine~~ 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 22, 1985

CHAPTER 392

SENATE BILL NO. 2043
(Legislative Council)
(Interim Agriculture Committee)

LICENSING AND BONDING OF LIVESTOCK AUCTION MARKETS

AN ACT to amend and reenact sections 36-05-01, 36-05-03, 36-05-04, 36-05-05, 36-05-06, 36-05-09, 36-05-13, and 36-05-13.1 of the North Dakota Century Code, relating to transferring authority over the licensing and bonding of livestock auction markets from the livestock sanitary board to the commissioner of agriculture.

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

SECTION 1. AMENDMENT. Section 36-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of agriculture.
2. "Livestock" means horses, mules, cattle, swine, sheep, and goats.
- 2- 3. "Livestock auction markets" market" means a place or establishment conducted or operated for compensation or profit as a public market, consisting of pens or other enclosures and their appurtenances, in which livestock is received, held, or kept for sale and where such livestock is sold or offered for sale, at either public auction or private sale.

SECTION 2. AMENDMENT. Section 36-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-03. License requirements - Application - Fee - Commission schedule - Facilities. No person, partnership, firm, or corporation ~~shall~~ may establish or operate a livestock auction market within this state without first procuring a license to do so from the ~~livestock sanitary board~~ commissioner. The commissioner may not approve any application without written permission from the executive officer of

the livestock sanitary board. An applicant for such license shall do all of the following:

1. Make a written application therefor in the form prescribed by the livestock sanitary board commissioner.
2. File such evidence as the livestock sanitary board or the commissioner may require showing that he or it the person is financially responsible to operate such an auction market and that he or it the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock.
3. Pay to the livestock sanitary board commissioner a license fee of one hundred dollars.
4. File with the livestock sanitary board commissioner a schedule of the fees and commissions which will be charged to owners, sellers, or their agents, such. The schedule shall likewise must be posted conspicuously at the auction market. This schedule shall may not be altered except upon notification to the livestock sanitary board commissioner and reposting of the changed schedule.
5. State the place where applicant proposes to operate a livestock auction market.
6. Make a complete and detailed description of the property and facilities proposed to be used in connection with such livestock auction market.
7. Make a showing of public convenience and necessity to the satisfaction of the board, provided, however, that the provisions of this subsection shall not apply to livestock auction markets legally licensed and engaged in business prior to July 1, 1965 commissioner.

SECTION 3. AMENDMENT. Section 36-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-04. Bond to accompany application for license - Amount - Approval - Conditions - Exemptions. Each applicant for a license to operate a livestock auction market shall file with his the application for such license, or for a renewal thereof, a surety bond in the minimum amount of ten thousand dollars. Such The bond shall must be approved as to the amount, form, and surety by the livestock sanitary board commissioner. The livestock sanitary board shall commissioner must be named the obligee in the bond, and it shall the bond must be for the benefit of, and for the purpose of protecting, any person selling to or through or buying livestock through or from the licensee or his or its the licensee's agent. The livestock sanitary board commissioner may demand an additional bond of the licensee whenever in its the commissioner's judgment the volume of

the business of the licensee warrants such demand. The bond ~~shall~~ must be conditioned for:

1. The payment of all money received by the licensee and operator of such livestock auction market as such operator, less reasonable expenses and agreed commissions;
2. The faithful performance by the licensee of ~~his~~ the duties as such ~~licensee~~; and
3. The faithful performance by the licensee of all of the provisions of this code relating to the purchase, sale, or holding of livestock.

~~Such The~~ bond ~~shall~~ must cover the entire license period. Provided, however, where the ~~livestock sanitary board executive officer~~ commissioner is the trustee or obligee of a surety bond wherein ~~said~~ the auction market operator is the principal and is operating and is bonded under ~~the provisions of~~ the Packers and Stockyards Act, 1921 ~~of the United States~~ [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.], the ~~executive officer~~ commissioner may accept such bond in lieu of the one herein otherwise required, except that the minimum bond requirements of ten thousand dollars ~~shall~~ will be continued.

SECTION 4. AMENDMENT. Section 36-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-05. Expiration and renewal of license - Fee returned upon failure to issue or renew license. Each license issued under the provisions of this chapter ~~shall expire~~ expires on the thirty-first day of January next following the date of issuance thereof. Each license ~~shall~~ must be renewed annually on or before January thirty-first. The fee for a renewal license ~~shall be~~ is the same as that prescribed for an original license. If the ~~livestock sanitary board~~ commissioner does not issue a requested original license or renewal license, the fee paid ~~shall~~ must be refunded to the applicant.

* SECTION 5. AMENDMENT. Section 36-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-06. Investigation of auction market - Hearing conducted to determine whether license should be issued or revoked. The ~~livestock sanitary board~~ commissioner upon ~~its~~ the commissioner's own motion or upon a complaint by any person, may enter into an investigation of the sales and transactions of any livestock auction market and of the conditions under which its business is conducted. The ~~livestock sanitary board~~ commissioner when ~~it~~ the commissioner deems it necessary, may conduct a hearing to determine whether the license of any auction market should be revoked or whether the application of the owner or operator of a livestock auction market for an original or renewal license should be denied.

SECTION 6. AMENDMENT. Section 36-05-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 36-05-06 was also amended by section 5 of Senate Bill No. 2044, chapter 389.

36-05-09. Records to be kept by operator of auction market - Contents - Examination - Report. The operator of each livestock auction market shall keep on file an accurate record of all of the following:

1. The date on which each consignment of animals was received and sold.
2. The name and address of the buyer and seller of such animals.
3. The number and species of the animals received and sold.
4. The marks and brands on each such animal.

Such ~~This~~ record, together with the gross selling price, commission, and other proper care, handling, and sales charges on each consignment of livestock ~~shall~~ must be available for inspection by the livestock sanitary board, the commissioner, or ~~its~~ authorized ~~inspector~~ inspectors, and a copy thereof ~~shall~~ must be supplied to the owner of such livestock. All records of sales during the preceding twelve months ~~shall~~ must be kept readily accessible for immediate examination.

* SECTION 7. AMENDMENT. Section 36-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-13. Use of fees ~~collected by livestock sanitary board~~ - Grounds for refusal or revocation of license - Procedure on ~~renewation~~ and on default of licensee. All fees collected by the commissioner and the livestock sanitary board under ~~the provisions of this chapter~~ shall ~~must~~ be credited to the general fund of the state treasury. A license to operate a livestock auction market may be refused or revoked for any of the reasons specified in section 36-04-10, ~~and the provisions of section 36-04-11 shall govern the procedure under which a hearing shall be had before the livestock sanitary board to determine whether such license shall be revoked.~~ When the holder of a license issued under ~~the provisions of this chapter~~ shall ~~default~~ defaults in any of the conditions of any bond filed with the livestock sanitary board commissioner by such ~~the~~ licensee ~~this board shall, the commissioner will become trustee of such the bond and the provisions of sections 36-04-12 through 36-04-19 shall govern the procedure to be followed.~~

SECTION 8. AMENDMENT. Section 36-05-13.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-13.1. Review by the court. The action of the livestock sanitary board commissioner in denying an application for a license or in revoking or suspending a license may be appealed to the district court of Burleigh County by procedure applicable to appeals taken in the manner provided in chapter 28-32, except that the livestock sanitary board's commissioner's order revoking or suspending the license may be stayed by the court appealed to upon filing with the clerk of said court a bond approved by and in the amount set by the judge of said district court for the faithful observance of the laws of the state relative to the operation of the business licensed during the pendency of the appeal.

Approved March 22, 1985

* NOTE: Section 36-05-13 was also amended by section 7 of Senate Bill No. 2044, chapter 389.

CHAPTER 393

SENATE BILL NO. 2340
(D. Meyer)

LIVESTOCK BRAND INSPECTORS

AN ACT to create and enact a new section to chapter 36-09 of the North Dakota Century Code, relating to police powers of livestock brand inspectors.

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

SECTION 1. A new section to chapter 36-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Police powers of chief brand inspector and two field men. The chief brand inspector and two field men employed by the North Dakota stockmen's association have the power:

1. Of a police officer for the purpose of enforcing brand laws and any other state laws or rules relating to livestock.
2. To make arrests upon view and without warrant for any violation of this chapter or any other state laws or rules relating to livestock committed in the inspector's presence.
3. To respond to requests from other law enforcement agencies or officers for aid and assistance. For the purposes of this subsection, a request from a law enforcement agency or officer means only a request for assistance to a particular and single violation or suspicion of violation of law, and does not constitute a continuous request for assistance.

Approved March 22, 1985

MILITARY

CHAPTER 394

HOUSE BILL NO. 1515
(Representatives Martinson, Strinden, Mertens)
(Senators Nething, Lodoen, W. Meyer)

NATIONAL GUARD TRAINING AREA TRUST FUND

AN ACT to create and enact a new subsection to section 21-10-06 and a new chapter to title 37 of the North Dakota Century Code, relating to funds under management of the state investment board, and to the establishment of a national guard trust fund for training area and facility development; to amend and reenact section 54-17.1-08 of the North Dakota Century Code, relating to the sinking fund for Vietnam Conflict adjusted compensation bonds; to provide an appropriation; and to provide a statement of legislative intent.

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

SECTION 1. A new subsection to section 21-10-06 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

National guard training area and facility development trust fund.

SECTION 2. A new chapter to title 37 of the North Dakota Century Code is hereby created and enacted to read as follows:

National guard training area and facility development trust fund. The national guard training area and facility development trust fund is established as a special fund in the state treasury. The fund must be used for training area acquisition and facility development pursuant to this chapter.

National guard training area and facility development trust fund - Investment and income. The national guard training area and facility development trust fund consists of moneys transferred or credited to the fund, pursuant to this chapter and provisions of other laws. The state investment board shall invest the fund in the legal investments authorized by section 21-10-07. All interest earned and income received on the investments accrue to the fund.

Trust fund use. The principal, interest, and income from the national guard training area and facility development trust fund must be used by the adjutant general solely for training area acquisition and facility development; provided, that the principal, and any interest and income which the fund accrues from July 1, 1985, through June 30, 1989, must be used solely for the acquisition of land for national guard training purposes and the expenditure, in conjunction with federal matching funds, for the construction of a new national guard armory on or adjacent to the military reservation known as Fraine Barracks.

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 game and fish commissioner, 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 3. AMENDMENT. Section 54-17.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17.1-08. Transfer of balance. To the extent not necessary for payment of the bonds issued under this chapter and the interest thereon after July 1, 1985, on July 1, 1985, the state treasurer shall transfer three million dollars from the sinking fund, or the total of any lesser amount remaining in the fund at that time, to the national guard training area and facility development trust fund, and three million dollars from the sinking fund, or the total of any lesser amount remaining in the fund after the transfer to the trust fund, to the general fund. Upon the retirement of all bonds provided for in this chapter, together with the interest thereon, any balance remaining in the sinking fund after the transfers to the trust fund and the general fund shall be transferred by the treasurer to the general fund.

SECTION 4. APPROPRIATION. There is hereby appropriated out of the principal, and any interest earned and income of the national guard training area and facility development trust fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much thereof as may be necessary or as may become available, to the adjutant general, for the purpose of implementing section 2 of this Act for the period beginning July 1, 1985, and ending June 30, 1989. This appropriation is not subject to North Dakota Century Code section 54-44.1-11.

SECTION 5. INTENT. It is the intent of the legislative assembly that the funds appropriated in section 4 of this Act be used for the acquisition of land for national guard training purposes prior to being used for the construction of a new national guard armory on or adjacent to the military reservation known as Fraine Barracks.

Approved March 29, 1985

* NOTE: Section 54-17.1-08 was also amended by section 1 of Senate Bill No. 2341, chapter 570.

CHAPTER 395

HOUSE BILL NO. 1411
(Martinson)

NATIONAL GUARD TUITION TRUST FUND USES

AN ACT to create and enact a new subsection to section 21-10-06 of the North Dakota Century Code, relating to funds under the management of the state investment board; to amend and reenact section 1 of chapter 43 of the 1981 Session Laws of North Dakota, relating to the national guard tuition trust fund; and to declare an emergency.

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

SECTION 1. A new subsection to section 21-10-06 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

National guard tuition trust fund.

* SECTION 2. AMENDMENT. Section 1 of chapter 43 of the 1981 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 1. North Dakota national guard tuition fund. There is hereby established a special trust fund in the state treasury to be known as the national guard tuition trust fund. Interest earned on such fund shall be used, within the limits of legislative appropriation, for the tuition programs provided for in chapters 37-07.1 and 37-07.2, work study programs, and other programs to encourage membership in the national guard. The fund shall not be subject to the provisions of section 54-44.1-11. The moneys in the fund shall be invested by the state ~~treasurer~~ investment board and interest earned by the fund shall be credited to the fund. On July 1, ~~1989~~ 1999, any unobligated balance in the fund shall be transferred to the general fund.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 14, 1985

* NOTE: Section 2 has been codified as North Dakota Century Code section 37-07.1-06.1.

CHAPTER 396

SENATE BILL NO. 2430
(Tallackson, Christensen)

NATIONAL GUARD FACILITIES MAINTENANCE

AN ACT to create and enact a new section to chapter 37-10 of the North Dakota Century Code, relating to national guard facilities.

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

SECTION 1. A new section to chapter 37-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 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.

Approved March 31, 1985

CHAPTER 397

SENATE BILL NO. 2089
(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

VETERANS

AN ACT to create and enact two new sections to chapter 37-15 of the North Dakota Century Code, relating to definitions and establishing priorities for admission to the veterans' home; and to amend and reenact sections 15-10-18.2, 21-10-06, subdivision w of subsection 1 of section 28-32-01, sections 37-01-40, 37-14-03.3, 37-14-04, 37-14-06, 37-15-01, 37-15-02, 37-15-03, 37-15-07, 37-15-08, 37-15-10, 37-15-11, 37-15-12, 37-15-13, 37-15-14, 37-15-14.1, 37-15-15, 37-15-16, 37-15-17, 37-15-19, 37-15-21, 37-18.1-03, 37-18.1-04, subsection 5 of section 37-19.1-01, and sections 54-23-01, 54-23-56, 54-23-59, and 57-36-24 of the North Dakota Century Code, relating to changing the name of the soldiers' home to the veterans' home, benefits available to peacetime veterans as well as to wartime veterans, the exclusion of the administrative committee on veterans' affairs from the Administrative Agencies Practice Act, and the powers and duties of the commandant of the veterans' home.

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

SECTION 1. AMENDMENT. Section 15-10-18.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-10-18.2. Definitions.

1. "Dependent" for purposes of section 15-10-18.3 ~~shall mean~~ means any child of a resident veteran who was, during any conflict identified in section 37-01-40, 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.
2. "Resident veteran" means a person who:

- a. Was born in and lived in ~~the~~ this state of ~~North Dakota~~ until entrance into the armed forces of the United States;
- b. Was born in, but was temporarily living outside ~~the~~ this state of ~~North Dakota~~, not having abandoned residence therein prior to entrance into the armed forces of the United States; or
- c. Was born elsewhere but had resided within ~~the~~ this state of ~~North Dakota~~ for at least six months prior to entrance into military service and had prior to or during such six-month period:
 - (1) Registered for voting, or voted in ~~the~~ this state of ~~North Dakota~~;
 - (2) Being an unemancipated minor during such period of residence, had lived with a parent or person standing in loco parentis who had acquired a residence as set forth in this section; or
 - (3) If not registered for voting in ~~the~~ this state of ~~North Dakota~~, not registered for voting in another state.

SECTION 2. AMENDMENT. Section 21-10-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement, in accordance with section 15-39.1-26.
3. State fire and tornado fund.
4. Workmen's compensation fund.
5. ~~Soldiers'~~ Veterans' home improvement fund, in accordance with section 37-15-14.1.

Separate accounts shall be maintained for each of the above funds and the moneys or securities of the individual funds shall not be commingled. However, when it is deemed advantageous in the purchase, sale, or exchange of securities, securities belonging to one or more of the funds or the Bank of North Dakota may be purchased, sold, or exchanged as part of a single transaction. In the event of such sale, the respective funds shall immediately be credited with their proportionate share of the proceeds. In the event of such purchase or exchange, title to the securities shall be

taken in the name of the individual funds, proportionate to their share of the total purchase price.

The board of university and school lands shall consult with the state investment board or the director thereof on investment policies, and the board of university and school lands may delegate authority to the state investment board or the investment director to make such purchases, sales, or exchanges on its behalf.

SECTION 3. AMENDMENT. Subdivision w of subsection 1 of section 28-32-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- w. 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 4. AMENDMENT. Section 37-01-40 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-01-40. "Veteran" and "wartime veteran" defined - Uniform service dates for wartime veterans --Definitions.

1. A "veteran" is a person who has served on continuous federalized active military duty for twenty-four months or the full period for which the person was called or ordered to active military duty, whichever is shorter, and who was discharged or released therefrom under other than dishonorable conditions. A discharge reflecting "expiration of term of service" or "completion of required service" or words to that effect qualifies the shorter term of service as making the person a veteran.
2. A "wartime veteran" is a person who served in the active military forces, during a period of war or who received the armed forces expeditionary or other campaign service medal during an emergency condition and who was discharged or released therefrom under other than dishonorable conditions. "Wartime veteran" also includes a person who died in the line of duty in the active military forces, as determined by the armed forces.
3. In order to provide for the uniformity of period of service dates for wartime veterans, the following dates and terms shall be applicable to all acts of the state relative to wartime veterans where not otherwise specifically prescribed by statute:
 - 1- a. Civil war and confederate veterans who served between April 12, 1861, and May 26, 1865.

- 2- b. Future dates. The period beginning on the date of any future declaration of war by the Congress of the United States or the beginning of an emergency condition recognized by the issuance of a presidential proclamation or a presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to presidential executive order and ending on a date prescribed by presidential proclamation or concurrent resolution of the Congress of the United States.
- 3- c. Indian wars. Since the Indian wars were fought intermittently over a period of years, the determination as to whether a person shall be considered as having rendered military service during these wars will be carefully considered by the administrative committee on veterans' affairs. January 1, 1817, through December 31, 1898, is considered Indian war period.
- 4- d. "Korean conflict" means the period between June 27, 1950, to January 31, 1955.
- 5- e. Mexican wars. Since there were several skirmishes involving the Mexican border, such as Mexican border troubles 1911-1916; Veracruz expedition April 21, 1914, to November 26, 1914; punitive expedition into Mexico, March 15, 1916, to February 5, 1917; therefore the persons rendering military service in any of these skirmishes shall be considered veterans of the Mexican wars between 1911 and February 5, 1917.
- 6- f. "Spanish-American War" (a) (1) means the period beginning on April 21, 1898, and ending on July 4, 1902, (b) (2) includes the Philippine insurrection and the Boxer rebellion, and (c) (3) in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro province, means the period beginning on April 21, 1898, and ending on July 15, 1903.
- 7- "Veteran" means a person who served in the active military forces, during a period of war or who received the armed forces expeditionary or other campaign service medal during an emergency condition and who was discharged or released therefrom under honorable conditions. The term "veteran" also includes a person who died in active military forces.
- 8- g. "Vietnam era" means the period beginning August 5, 1964, and ending on May 7, 1975.
- 9- h. "World War I" (a) (1) means the period beginning on April 6, 1917, and ending on November 11, 1918, and

~~(b)~~ (2) in the case of a veteran who served with the United States military forces in Russia, means the period beginning on April 6, 1917, and ending on April 1, 1920.

~~10-~~ i. "World War II" means the period beginning December 7, 1941, and ending December 31, 1946, both dates inclusive.

SECTION 5. AMENDMENT. Section 37-14-03.3 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-03.3. Revolving fund. ~~Such~~ The sum of seven hundred thousand dollars shall be ~~is~~ a permanent revolving fund of the veterans' aid fund and shall not revert to the general fund and shall be used solely for the purpose of making loans to any veteran of the armed forces of the United States who served in World War II, the Korean conflict, or during hostilities in Vietnam, as defined by section 37-01-40; however, nothing in this section prohibits the department of veterans' affairs, in its discretion, from using any interest the fund accrues or has already earned or accrued for the purposes of collecting loans if in the opinion of the department the veteran has the financial means to repay, and he deliberately refuses to do so.

SECTION 6. AMENDMENT. Section 37-14-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-04. Veterans' aid fund - Purpose. The purpose of the veterans' aid fund is to make loans or advancements to any veteran of the armed forces of the United States in World War II, the Korean conflict, or during hostilities in Vietnam, all as defined by section 37-01-40, who has not been dishonorably discharged. A veteran may be permitted to make more than one loan providing he the veteran has satisfied payment requirements of a previous loan.

SECTION 7. AMENDMENT. Section 37-14-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-06. Department may provide aid. If the department of veterans' affairs is satisfied that ~~such an~~ an applicant has served as a member of the armed forces of the United States for an aggregate time of not less than thirty days during World War II, the Korean conflict, or during hostilities in Vietnam, ~~all is a veteran,~~ all is a veteran, as defined by section 37-01-40, and that he the applicant is a citizen and resident of ~~the this state of North Dakota,~~ the this state of North Dakota, and that he has not been dishonorably discharged, the department may loan to ~~such the~~ such the applicant, or a guardian of ~~such the~~ such the applicant, a sum from the veterans' aid fund not to exceed the sum of two thousand dollars.

SECTION 8. AMENDMENT. Section 37-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-01. Soldiers' Veterans' home - Where maintained. A soldiers' veterans' home shall be maintained at the city of Lisbon in the county of Ransom.

SECTION 9. A new section to chapter 37-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Domiciliary care" defined. In this chapter, unless the context or subject matter otherwise requires, "domiciliary care" means providing shelter, food, and necessary medical care on an ambulatory self-care basis to assist eligible individuals who are not in need of hospitalization or skilled nursing care services. Domiciliary care does not include care to an individual whose mental or medical condition would require close supervision because the individual may pose a danger to oneself or others.

SECTION 10. AMENDMENT. Section 37-15-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-02. Object of soldiers' veterans' home. The object of the soldiers' veterans' home shall be is to provide a home and subsistence domiciliary care for:

1. All honorably discharged United States soldiers, sailors, marines, and coast guard who have served the United States in any of its wars or military expeditions and who are disabled by disease, wounds or otherwise and do not have sufficient means or ability to support themselves, and honorably discharged members of the North Dakota national guard mustered into federal service in 1916 and who served on the Mexican border veterans as defined in section 37-01-40 and all honorably discharged soldiers of the North Dakota national guard who heretofore or hereafter may become permanently disabled from any cause while in line and discharge of duty.
2. The spouses and surviving spouses of those mentioned in subsection 1 providing if they meet the requirements for admission under the provisions of section 37-15-10.

SECTION 11. AMENDMENT. Section 37-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-03. Government of soldiers' veterans' home. The general supervision and government of the soldiers' veterans' home shall be is vested in the administrative committee on veterans' affairs.

SECTION 12. AMENDMENT. Section 37-15-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-07. Commandant of soldiers' veterans' home - Appointment - Qualifications - Term - Salary - Bond. The appointment, qualifications, term of office, and salary of the commandant of the soldiers'

veterans' home shall must be as prescribed in section 37-18.1-03. The commandant shall be bonded through the state bonding fund in the amount as determined by the administrative committee on veterans' affairs, provided except that such the amount of the bond shall must be in a minimum amount of at least five thousand dollars.

SECTION 13. AMENDMENT. Section 37-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-08. Subordinate officers - Appointment - Preference to veterans - Compensation - Removal. The commandant of the soldiers' veterans' home shall appoint all necessary subordinate officers of the home. In the appointment of such officers, the preference afforded by the provisions of chapter 37-19.1 shall must be given to those persons who qualify therefor. The commandant shall fix the compensation of all subordinate officers shall be fixed by the commandant, subject to legislative appropriation, and any such officer may be removed by the commandant for inefficiency or misconduct.

SECTION 14. AMENDMENT. Section 37-15-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-10. Admittance to soldiers' veterans' home - Requirements governing.

1. No applicant shall be admitted to the soldiers' veterans' home unless he or she the applicant has been a bona fide resident of this state for at least three years one year next preceding his or her the applicant's application for admission thereto. The three-year one-year residency immediately preceding application may be waived if the applicant served in a North Dakota regiment or was accredited to the this state of North Dakota during a war period.
2. All honorably discharged soldiers of the North Dakota national guard who heretofore or hereafter may become permanently disabled from any cause while in line and discharge of duty and are not able to support themselves; due to aforesaid disabilities; may be admitted to the North Dakota soldiers' home in accordance with the laws for admission of others and under such rules and regulations as the administrative committee on veterans' affairs may adopt.
3. The spouse or surviving spouse of those mentioned in subsection 1 of section 37-15-02 may be admitted upon the same footing as the veteran; provided, however, that such spouse or surviving spouse shall have entered into the contract of marriage to the veteran at least five years prior to date of application and shall have attained the age of forty-five years at date of application.

- 4- 3. No person shall be admitted to the home until he or she that person shall have made formal application and furnished such proof as may be required by the administrative committee on veterans' affairs and such the application shall have been approved by the committee or a board of officers admissions of the institution which they shall designate that the committee has designated.
- 5- 4. When a member of the home who is not eligible for veterans' administration hospitalization and care becomes unable from any cause to care for himself or herself oneself under the rules and regulations prescribed by the administrative committee on veterans' affairs for the admission and care of members in the home, he or she the member shall become a charge of the county of residence at the time of admission. No individual shall gain or lose legal residence by reason of residence in or being a member of the soldiers' veterans' home.

SECTION 15. A new section to chapter 37-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Priorities for admission to veterans' home. If the veterans' home is full and a waiting list for admission is necessary, further admission to the veterans' home must be according to the following listing of priorities, so long as the individual meets the admission requirements of sections 37-15-02 and 37-15-10:

1. Veterans with service-connected disability.
2. Prisoners of war.
3. Wartime veterans with nonservice-connected disability.
4. Wartime veterans.
5. Discharged North Dakota national guard members who became disabled in the line and discharge of duty.
6. Veterans with nonservice-connected disability.
7. Veterans.
8. Spouses.
9. Surviving spouses.

An individual whose priority is higher than another individual's must be admitted before that other individual.

SECTION 16. AMENDMENT. Section 37-15-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-11. Lands granted for support of soldiers' veterans' home and proceeds therefrom. All lands granted by the United States or by this state for the soldiers' veterans' home are set apart for the support of the home. The proceeds from the sales of ~~such~~ these lands are pledged as a perpetual fund for the use and benefit of the home.

SECTION 17. AMENDMENT. Section 37-15-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-12. Federal aid accepted for soldiers' veterans' home. The state accepts the conditions imposed by an Act of Congress, entitled "An act to provide aid to state or territorial homes for the support of disabled soldiers and sailors in the United States, approved August 27, 1888", and the various amendments thereto.

SECTION 18. AMENDMENT. Section 37-15-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-13. Treasurer to receive and deposit federal aid money. The state treasurer shall receive and receipt for all money which may become payable to this state by reason of the acceptance of the Acts of Congress as provided in section 37-15-12. ~~He~~ The state treasurer shall deposit such money to the credit of the soldiers' veterans' home operating fund for the use and benefit of the soldiers' veterans' home.

SECTION 19. AMENDMENT. Section 37-15-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-14. Soldiers' Veterans' home operating fund - Moneys for the maintenance of the soldiers' veterans' home to be deposited with state treasurer. A special fund, to be known as the soldiers' veterans' home operating fund, shall be maintained in the state treasury. Moneys arising from the interest received on money derived from the sale of lands appropriated for the support of the home and from the rental of such lands, moneys received from the United States for the support and maintenance of the home, and all other moneys, income, and collections of public funds arising from any other source or endeavor of the home shall must be placed in the soldiers' veterans' home operating fund for the use and maintenance of the soldiers' veterans' home. Moneys derived from the general fund appropriation made by the legislative assembly shall must be transferred periodically to the soldiers' veterans' home operating fund upon order of the director of the department of accounts and purchases office of management and budget whenever such the operating fund's balance ~~falls so low as to require~~ requires supplementation.

SECTION 20. AMENDMENT. Section 37-15-14.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-14.1. Membership contribution for residents of veterans' home - Creation of special fund.

1. The administrative committee on veterans' affairs may establish a membership contribution to be paid by members of the veterans' home. The fee shall be based on the adjusted income of each member, but in no case shall it exceed forty-nine percent of the average daily per-member cost. The membership contribution shall be set under a formula determined by the administrative committee and designed to assure dignity and equity in the charge. The administrative committee may, from time to time, reconsider its action establishing a membership contribution, amend or rescind the contribution charge, or reinstate a contribution charge previously rescinded. The commandant shall collect monthly any membership contribution levied.
2. As used in subsection 1, "adjusted income" means all moneys received from any source, including social security benefits, less amounts received or expended as follows:
 - a. Moneys earned by a member through labor performed for the ~~seidiers'~~ veterans' home.
 - b. Moneys received as service-connected compensation.
 - c. Moneys earned during authorized leaves or furloughs from the ~~seidiers'~~ veterans' home.
 - d. Moneys expended by the member for hospitalization due to illness or injury.
 - e. Moneys expended by the member for other medical care or treatment, or for required medicines.
 - f. Such other receipts or expenditures as the administrative committee may permit to be deducted in individual cases.
3. All moneys received as a result of charging the membership contribution authorized by subsection 1 shall be deposited in a special fund in the state treasury to be known as the "~~seidiers'~~ veterans' home improvement fund". The fund shall be invested by the state investment board in the manner provided in chapter 21-10, and all income received, less amounts deducted pursuant to section 21-10-10, shall be deposited in, or reinvested for the benefit of, the ~~seidiers'~~ veterans' home improvement fund. Moneys in the ~~seidiers'~~ veterans' home improvement fund shall, subject to and following legislative appropriations, be expended only for expansion of present facilities of the home, for development of new facilities, for enrichment of living conditions, or for additional care for members of the home, as such expansion, development, enrichment, or additional care is deemed necessary by the administrative committee. All moneys expended from the ~~seidiers'~~

veterans' home improvement fund shall be paid out on vouchers prepared by the secretary of the administrative committee on veterans' affairs. The department of accounts and purchases office of management and budget shall prepare the warrant-checks.

SECTION 21. AMENDMENT. Section 37-15-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-15. Disbursement of moneys from soldiers' veterans' home operating fund. All moneys withdrawn from the soldiers' veterans' home operating fund shall be withdrawn in accordance with chapters 54-14 and 54-44.1.

SECTION 22. AMENDMENT. Section 37-15-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-16. Commandant shall take charge of unclaimed estates of small value. If a member of the soldiers' veterans' home shall die dies leaving property of the value of three hundred thousand dollars or less, the commandant immediately shall take charge of such property. If within one year forty-five days of the date of the death of such member no valid claim of any heir or devisee is made for the property and no application or petition has been filed for issuance of letters of administration, the commandant shall convert the property into cash without probate or other proceedings and make payment in the following order:

1. Reasonable funeral expenses.
2. Reasonable and necessary medical and hospital expenses of the last illness of the decedent.

If any cash remains the commandant shall deposit the cash with the state treasurer who shall credit it to the soldiers' veterans' home operating improvement fund. The commandant shall make a report of his the commandant's action to the administrative committee on veterans' affairs, which. The report shall be audited by, and spread upon included in the records of, the committee.

SECTION 23. AMENDMENT. Section 37-15-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-17. Intestate members leaving estates valued in excess of three hundred thousand dollars - Commandant to administer. If a member of the soldiers' veterans' home shall die dies leaving property in excess of three hundred thousand dollars in value not disposed of by will, the commandant shall be entitled to letters of administration upon such estate. He shall make application to the proper court for letters of administration, qualify as administrator, and distribute and dispose of such estate as is provided by this code. If no valid claim shall be made to such estate by the heirs or the next of kin of the deceased member for a period of one year after the granting of letters of administration, the residue of the estate shall revert

to this state be deposited with the state treasurer for the benefit of the soldiers' veterans' home improvement fund.

SECTION 24. AMENDMENT. Section 37-15-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-19. Report of commandant to governor and department of accounts and purchases office of management and budget. The commandant of the soldiers' veterans' home shall 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.

SECTION 25. AMENDMENT. Section 37-15-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-21. Commandant may accept gifts, donations, or bequests. The commandant for and in behalf of the soldiers' veterans' home is hereby authorized to accept or receive any donations, gifts, or bequests offered or tendered to, or for the benefit of the soldiers' veterans' home. All such moneys received or accepted shall be used for the specific purposes for which they were given or donated. This authority shall apply and be retroactive to any or all gifts, donations, or bequests heretofore tendered, offered, or made.

SECTION 26. AMENDMENT. Section 37-18.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-18.1-03. Powers and duties of committee - Creation of subcommittees. The committee ~~shall be~~ is responsible for organization, policy, and general administration of all veterans' affairs in the state of North Dakota. It ~~shall have~~ has the following powers and duties:

1. The chairman and secretary of the committee, acting jointly, shall appoint from the voting membership of the committee, two subcommittees: a five-member subcommittee to be responsible for supervision and government of the soldiers' veterans' home, and a seven-member subcommittee to be responsible for supervision and government of the department of veterans' affairs. Once appointed, a subcommittee member shall continue to serve as long as he remains a voting member of the committee, unless removed from the subcommittee by the committee chairman and secretary, acting jointly. In no case shall any one voting member serve on both subcommittees at the same time, and each nominating organization listed in section 37-18.1-01 shall have at least one voting member nominated by it serving on each subcommittee. From the membership of each subcommittee, a chairman will be selected by majority vote to preside over it for the term of one year. No person shall be permitted to serve as chairman of the committee and as chairman of a subcommittee simultaneously. A majority of the members of the

- subcommittee shall be required for a quorum, and a majority of the members present voting in favor thereof shall be required for any action.
2. The committee shall detail the specific powers and duties of each subcommittee relating to supervision, government, and implementation of programs or services provided by the soldiers' veterans' home and the department of veterans' affairs.
 3. The committee shall appoint the commandant of the soldiers' veterans' home and the commissioner of the department of veterans' affairs. Individuals appointed to these positions must be bona fide residents of the state, must hold an honorable discharge from active service within the armed forces of the United States, and must have served during a period of war or armed conflict and must qualify as a veteran as defined in section 37-01-40. Their terms of office shall be for two years, commencing on July 1, 1971, and on every second anniversary thereof. The committee shall determine the salaries paid to the commandant of the soldiers' veterans' home and the commissioner of the department of veterans' affairs within the limits of legislative appropriation. Both officers shall be bonded through the state bonding fund in the sum of five thousand dollars. The commandant of the soldiers' veterans' home and the commissioner of veterans' affairs shall serve as the executive secretary for their respective subcommittees. The commandant and the commissioner shall have no vote in the affairs of the subcommittees.
 4. The committee shall, under recommendation from each of its subcommittees, present any matters needing attention and action to the appropriate board, commission, agency, or department of the state, and the North Dakota veterans' coordinating council.
 5. The committee shall assure compliance with applicable federal and state laws in the administration of both the department of veterans' affairs and the North Dakota soldiers' veterans' home and shall exercise its responsibilities in all things necessary to carry out the provisions of this chapter in regard to organization, policy, and general administration of the agencies served and involved in the conduct of veterans' affairs.

SECTION 27. AMENDMENT. Section 37-18.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-18.1-04. Committee members not to receive compensation - Expenses permitted. Committee members shall not receive any compensation for the performance of their official duties. Voting members may be

reimbursed for travel expenses and meals and lodging expenses in connection with their official duties at the same rate and in the same manner as are elected officials and employees of the state, with payment to be made by the department of veterans' affairs and the soldiers' veterans' home to each of their respective subcommittee members incurring such expenses. Such payment shall be made by warrant-check drawn by the department of accounts and purchases office of management and budget upon the submission of a proper voucher to it, signed by the commissioner of veterans' affairs or the commandant of the soldiers' veterans' home, as the case may be.

SECTION 28. AMENDMENT. Subsection 5 of section 37-19.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Veteran" ~~shall be~~ means a wartime veteran as defined in subsection 7 2 of section 37-01-40.

* SECTION 29. AMENDMENT. Section 54-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-01. Institutions under control of director of institutions. The director of institutions shall have full power to manage, control, and govern, subject only to the limitations contained in this chapter and in title 25, the penitentiary, the school for the blind, the school for the deaf, the Grafton state school, the North Dakota industrial school, and San Haven. The director ~~shall~~ does not have the power to manage, control, and govern the soldiers' veterans' home.

SECTION 30. AMENDMENT. Section 54-23-56 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-56. Director to coordinate and assist charitable and penal institutions in farm operations. All crop, vegetable, livestock, dairy, and related activities at the state penitentiary, state farm, state industrial school, state hospital, Grafton state school, and the soldiers' veterans' home, shall be coordinated to the greatest possible extent by the director of institutions, who shall provide the various institutions with the managerial and technical assistance necessary to develop and maintain efficient nonduplicating farm and related operations.

SECTION 31. AMENDMENT. Section 54-23-59 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-59. Legislative intent Employees of institutions - Charges for lodging and meals. It is the intent of the legislative assembly that ~~officers~~ Officers and employees of institutions under the supervision of the director of institutions, the state department of health, and the board of trustees of the soldiers' home shall administrative committee on veterans' affairs may not receive lodging or meals at such institutions unless a charge is

- * NOTE: Section 54-23-01 was also amended by section 12 of House Bill No. 1062, chapter 311.

made therefor, ~~which~~. Any charge ~~shall~~ must be equal to the fair value of the meals and lodging provided. If an officer or employee is required by law to live at the institution, ~~his~~ that person's lodging ~~shall~~ must be furnished free of charge. Food supplies, other than meals for which a charge is made, ~~shall~~ may not be provided to officers and employees of institutions under the supervision of the ~~the~~ director of institutions, the state department of health, and the ~~board of trustees of the soldiers' home~~ administrative committee on veterans' affairs.

SECTION 32. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-24. Exemptions. All gift cigarettes, snuff, cigars, and other tobacco products, not for resale, which are given to the North Dakota ~~soldiers'~~ veterans' home or the North Dakota state hospital for distribution to the occupants thereof, ~~shall be~~ are exempt from the excise taxes levied under ~~the provisions of~~ this chapter.

Approved March 28, 1985

CHAPTER 398

HOUSE BILL NO. 1252
(Representative Martinson)

DISASTER OR EMERGENCY RESPONSE

AN ACT to amend and reenact sections 37-17.1-01, 37-17.1-02, 37-17.1-03, 37-17.1-04, 37-17.1-05, 37-17.1-06, 37-17.1-07, 37-17.1-09, 37-17.1-10, 37-17.1-11, 37-17.1-12, 37-17.1-13, 37-17.1-14, 37-17.1-15, 37-17.1-16, 37-17.1-17, 37-17.1-18, 37-17.1-19, 37-17.1-20, 37-17.1-21, and 37-17.1-22 of the North Dakota Century Code, relating to disasters or emergencies; and to repeal section 37-17.1-08 of the North Dakota Century Code, relating to disasters or emergencies.

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

SECTION 1. AMENDMENT. Section 37-17.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-01. Short title. This chapter shall be cited as the North Dakota Disaster Act of 1973 1985.

SECTION 2. AMENDMENT. Section 37-17.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-02. Purposes. The purposes of this chapter are to:

1. Reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or manmade ~~catastrophes, riots~~ disasters or emergencies, or hostile military or paramilitary action.
2. Prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster.
3. Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters or emergencies.

- 4- 3. Clarify the roles of the governor, state agencies, and local governments in prevention mitigation of, preparation for, and response to and recovery from disasters or emergencies.
- 5- Authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery.
- 6- 4. Authorize and provide for coordination of emergency management activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate.
- 7- 5. Provide a disaster for a statewide emergency management system embodying all aspects of pre-disaster preparedness and post-disaster response mitigation, preparedness, response and recovery.
- 8- Assist in prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use.

SECTION 3. AMENDMENT. Section 37-17.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-03. Limitations. Nothing in this chapter shall be construed to:

1. Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety.
2. Interfere with dissemination of news or comment on public affairs, but any. Any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster or emergency situation.
3. Affect the jurisdiction or responsibilities of units of the armed forces of the United States or of this state, or of any personnel thereof, when on active duty, but state, State and local, and interjurisdictional disaster emergency operational plans shall place reliance upon the forces available for performance of functions related to disaster disasters or emergencies.

4. Limit, modify, or abridge the authority of the governor to proclaim martial law, provide aid or assistance to civil authorities, or exercise any other powers vested in him under the Constitution of North Dakota, or statutes, common law, or sovereign powers of this state independent of, or in conjunction with, any provisions of this chapter.
5. Change or modify the responsibilities of the American National Red Cross as defined by the Congress of the United States in Public Law 58-4 [33 Stat. 599; 36 U.S.C. 1], as amended.

SECTION 4. AMENDMENT. Section 37-17.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-04. Definitions. As used in this chapter:

1. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including but not limited to: fire, flood, earthquake, wind, severe high and low temperatures, tornado storm, wave action, oil spill, or other water or air contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.
2. "Disaster and or emergency worker" means any full or part-time paid, volunteer, or auxiliary employee of this state, or other states, territories, possessions, or the District of Columbia, of the federal government, or any neighboring country, or of any political subdivision thereof, or of any agency or organization or other authorized person performing disaster or emergency services responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any political subdivision thereof.
3. "Political subdivision" means any county, city, or other unit of local government. "Emergency" means any situation which is determined by the governor to require state or state and federal response or mitigation actions to immediately supplement local governments to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.

4. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to and recover from, known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.

SECTION 5. AMENDMENT. Section 37-17.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-05. The governor and ~~disaster~~ disasters or emergencies - Penalty.

1. The governor is responsible ~~for meeting the dangers to the state and people presented by disasters to minimize or avert the adverse effects of a disaster or emergency.~~
2. Under this chapter, the governor may issue executive orders, and proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.
3. A disaster or emergency shall be declared by executive order or proclamation of the governor if he finds the governor determines a disaster has occurred or that this occurrence or the threat thereof is imminent a state of emergency exists. The state of disaster or emergency shall continue until the governor finds determines that the threat or danger of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation; but no state of disaster emergency may continue for longer than thirty days unless renewed by the governor. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time and thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster or emergency, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it shall be promptly filed with the state office of disaster division of emergency services management, the secretary of state, and the

county or city auditor of the county or counties jurisdictions affected.

4. An executive order or proclamation of a state of disaster or emergency shall activate the disaster response and recovery aspects of the state, and local, and interjurisdictional disaster emergency operational plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to a disaster emergencies or emergency.
5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander-in-chief of the disaster emergency services management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations emergency operational plans, but nothing herein restricts his the governor's authority to do so by orders issued at the time of the disaster or emergency.
6. In addition to any other powers conferred upon the governor by law, he the governor may:
 - a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations, of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the managing a disaster or emergency.
 - b. Utilize all available resources of the state government as reasonably necessary to cope with manage the disaster or emergency and of each political subdivision of the state.
 - c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services management activities.
 - d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if he the governor finds this necessary to cope with manage the disaster or emergency.

- e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
 - f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.
 - g. Control ingress and egress ~~to and from~~ in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.
 - h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.
 - i. Make provision for the availability and use of temporary emergency housing.
 - j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.
 - k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.
7. Any person who willfully violates any provision of an executive order, or proclamation, or regulation issued by the governor pursuant to this chapter shall be guilty of an infraction.

SECTION 6. AMENDMENT. Section 37-17.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-06. State division of disaster emergency services management.

1. A division of ~~disaster emergency services management~~ is hereby established in the office of the adjutant general. The division shall have a director appointed by, and to serve at the pleasure of, the adjutant general; and, his compensation shall be fixed by the adjutant general within the legislative appropriations. The division shall have a ~~planning officer~~ and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions. The director of the division shall fix the compensation of the staff in conformity with state merit system regulations and may make such expenditures within the appropriations therefor,

or from other funds made available to him for purposes of disaster preparedness emergency management, as may be necessary to carry out the purposes of this chapter.

2. The division of disaster emergency services management shall prepare and maintain a state disaster plan and keep it current, which plan may include provisions for:
 - a. Prevention and minimization of Averting or minimizing the injury and damage caused by disaster disasters or emergencies.
 - b. Prompt and effective response to a disaster or emergency.
 - c. Emergency relief.
 - d. Identification of areas particularly vulnerable to disasters a disaster or emergency.
 - e. Recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other preventive mitigation and preparedness measures designed to eliminate or reduce disasters or their impact.
 - f. Assistance to local officials in designing developing and maintaining local emergency action plans management systems.
 - g. Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster any disaster or emergency.
 - h. Preparation and distribution of emergency management assistance program guidance to the appropriate state and local officials of state catalogs of federal, state, and private assistance programs.
 - i. Organization of manpower and chains of command.
 - j. Coordination of federal, state, and local disaster emergency management activities.
 - k. Coordination of the state disaster plan or emergency operations plans with the disaster or emergency plans of the federal government.
 - l. Other necessary matters.

3. The division of disaster emergency services management shall take an integral part in the development and revision of local and interjurisdictional disaster or emergency operations plans prepared under section 37-17.1-07. To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies local emergency management organizations. These personnel shall consult with subdivisions and agencies local emergency management organizations on a regularly scheduled basis and shall make field examinations of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster or emergency plans are intended to apply, and may suggest or require revisions.
4. In preparing and revising the state disaster plan or emergency plans, the division of disaster emergency services management shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and interjurisdictional agencies emergency management organizations, the division shall encourage them also to seek advice from these sources.
5. The state State disaster plan or emergency plans or any part parts thereof may be incorporated in regulations of the division of disaster emergency services or executive orders which shall have the force and effect of law upon implementation by the governor.
6. The division of disaster emergency services management shall:
 - a. Determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of an emergency. Coordinate the procurement and prepositioning of supplies, materials, and equipment, for disaster or emergency operations.
 - b. Procure, and pre-position supplies, medicines, materials, and equipment.
 - c. Promulgate standards and requirements Provide guidance and standards for local and interjurisdictional disaster or emergency operational plans.
 - d. Periodically review local and interjurisdictional disaster or emergency operational plans.

- e- d. Coordinate for support state or state and federal assistance to local units of government emergency management organizations.
- f- e. Establish and operate or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies local emergency management organizations to establish and operate training programs and programs of for emergency public information.
- g- f. Make surveys of industries, resources, and facilities, within the state, both public and private, as are necessary to carry out the purposes of this chapter. The use of sensitive and proprietary logistical data submitted to the state in confidence by individual industries and suppliers shall be accorded full confidentiality and will be released only in aggregate form.
- h- g. Plan and make arrangements for the availability and use of any private facilities, services, and property, and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.
- i- h. Establish access to a register of persons with types of training and skills important in emergency prevention mitigation, preparedness, response, and recovery.
- j- i. Establish access to a register of mobile and construction equipment and temporary housing equipment and facilities available for use in a disaster or emergency.
- k- j. Prepare, for issuance by the governor, executive orders, proclamations, and regulations guidance as necessary or appropriate in coping with disasters managing a disaster or emergency.
- l- k. Cooperate Coordinate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention mitigation, preparation, response, and recovery.
- m- l. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization in carrying out the search for and rescue of persons, at any time, when no violation of criminal laws exists.

- n- m. Do other things necessary, incidental, or appropriate for the implementation of this chapter.

SECTION 7. AMENDMENT. Section 37-17.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-07. Local and interjurisdictional disaster agencies and services emergency management organizations.

1. All areas of the state shall be within the jurisdiction of and may shall be served by the division of disaster emergency services management and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response emergency management organization.
2. Each county shall maintain a disaster agency or participate in a local or interjurisdictional disaster agency which, except as otherwise provided under this chapter, has jurisdiction over and an emergency management organization which serves the entire county.
3. Each municipal corporation city shall provide a disaster agency an emergency management organization of its own, or it shall participate in a the countywide or an interjurisdictional disaster agency emergency management organization. Each governing board of a municipal corporation city shall make its determination on the basis of the municipality's disaster vulnerability and capability of response related to population size and concentration. The disaster agency of a county shall cooperate with the disaster agencies of municipalities situated within its borders but shall not have jurisdiction within a municipality having its own disaster agency city's emergency management requirements, hazards, capabilities, and resources. The division of disaster emergency services management shall publish and keep current a list of municipalities cities desiring to have disaster agencies an emergency management organization of their own.
4. Any provision of this chapter or other law to the contrary notwithstanding, the governor may require a political subdivision to establish and maintain a disaster agency jointly with one or more contiguous political subdivisions, if he finds that the political subdivision does not have a disaster agency of its own, or is not participating in an interjurisdictional disaster organization to provide disaster prevention, preparedness, response, or recovery services under other provisions of this chapter.

- 5- The mayor of a city, or chairman of the board of county commissioners, or other principal executive officer of each political subdivision in the state shall notify the division of disaster emergency services management of the manner in which the political subdivision city or county is providing or securing disaster planning and emergency services emergency management activities, identify the person who heads the agency from which the service is obtained will coordinate the activities of the local emergency management organization, and furnish additional information relating thereto as the division requires.
- 6- 5. Each local and interjurisdictional agency emergency management organization shall prepare and keep current a local or interjurisdictional disaster or emergency operational plan for its area.
- 7- 6. The local or interjurisdictional disaster agency, as the case may be, emergency management organization shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the disaster or emergency responsibilities of all their local agencies and officials and of the disaster chain of command.

SECTION 8. AMENDMENT. Section 37-17.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-09. Authority to utilize existing services and facilities. In carrying out the provisions of this chapter, the governor and the executive officers or governing bodies of the political subdivisions counties and cities of the state are directed to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state and of the political subdivisions counties and cities thereof to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are required and directed to cooperate with and extend such reasonable services and facilities to the governor and to the disaster emergency services management organizations of the state upon request.

SECTION 9. AMENDMENT. Section 37-17.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-10. Local disaster disasters or emergencies.

1. Unless so declared in accordance with the provisions of subsection 4 of section 37-17.1-05, a local disaster or emergency may be declared only by the principal executive officer of a political subdivision the county or city. It shall not be continued or renewed for a period in excess of seven days except by or with the consent of the

governing board of the political subdivision county or city. Any order or proclamation declaring, ~~continuing, or terminating~~ a local disaster or emergency shall be given prompt and general publicity and shall be filed promptly with the county or city auditor.

2. The effect of a declaration of a local disaster or emergency is to activate the response and recovery aspects of any and all applicable local ~~or interjurisdictional~~ disaster or emergency operational plans and to authorize the furnishing of aid and assistance thereunder.
3. ~~No interjurisdictional agency or official thereof may declare a local disaster emergency, unless expressly authorized by the agreement pursuant to which the agency functions. However, an interjurisdictional disaster agency shall provide aid and services in accordance with the agreement pursuant to which it functions.~~

SECTION 10. AMENDMENT. Section 37-17.1-11 of the North Dakota Code is hereby amended and reenacted to read as follows:

37-17.1-11. Disaster prevention or emergency mitigation.

1. In addition to disaster prevention or emergency mitigation measures as included in the state, and local, and ~~interjurisdictional~~ disaster or emergency operational plans, the governor shall consider, on a continuing basis, steps that could be taken to prevent mitigate or reduce the harmful consequences of disasters or emergencies. At ~~his~~ the governor's direction, and pursuant to any other authority and capability they have, state agencies, ~~including but not limited to~~ those charged with responsibilities in connection with: floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards, shall make studies of disaster prevention or emergency mitigation-related matters. The governor, from time to time, shall make recommendations to the legislative assembly, local governments, and other appropriate public and private entities as may facilitate measures for prevention mitigation or reduction of the harmful consequences of disasters or emergencies.
2. The North Dakota state engineer and the water conservation commission, in conjunction with the division of disaster emergency services management, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection shall concentrate on means of reducing or

avoiding the dangers caused by this occurrence or the consequences thereof.

3. If the division of disaster emergency services believes management determines, on the basis of the studies or other competent evidence, that: an area is susceptible to a disaster of catastrophic proportions without adequate warning; that; existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster; or emergency; and that changes in zoning regulations, other land use regulations, or building requirements are needed in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor, upon review of the recommendation determination, finds after public hearing, that the changes are essential, he the governor shall so recommend to the agencies or local governments with jurisdiction over the that area and subject matter. If no action or insufficient action pursuant to his the governor's recommendations is taken within the time specified by the governor, he the governor shall so inform the legislative assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency.
4. The governor, at the same time that he the governor makes his recommendations pursuant to subsection 3, may suspend the standard or control which he the governor finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the legislative assembly or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation shall be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review in accordance with chapter 28-32, but shall not be subject to temporary stay pending litigation.

SECTION 11. AMENDMENT. Section 37-17.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-12. Compensation.

1. Each person Persons within this state shall conduct himself themselves and keep and manage his their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disaster emergencies to effectively mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes

appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

2. No personal services may be compensated by the state or any subdivision or agency county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property shall be only if the property was commandeered or otherwise used in dealing with management of a disaster or emergency declared by the governor and its use or destruction was ordered by the governor ~~or the governor's state disaster emergency coordinator~~.
4. Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter shall file a claim therefor with the office of the management and budget in the form and manner required by the office.
5. Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of the management and budget, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

SECTION 12. AMENDMENT. Section 37-17.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-13. Communications. The division of ~~disaster emergency services management~~ shall ascertain what means exist for rapid and efficient communications in times of a disaster emergencies or emergency. The division shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or ~~state-federal~~ state and federal telecommunications or other communications system or network, including the military installations. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of multipurpose use thereof for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate.

SECTION 13. AMENDMENT. Section 37-17.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-14. Mutual aid.

1. ~~Political subdivisions not participating in interjurisdictional arrangements pursuant to this chapter nevertheless Counties and cities shall be encouraged and assisted by the division of disaster emergency services management to conclude suitable arrangements for furnishing mutual aid in coping with disasters emergency management. The arrangements shall include provision of aid by persons and units in public employ.~~
2. ~~In passing upon review of local disaster or emergency plans, the division of disaster emergency services management shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.~~
- 3- ~~It is a sufficient reason for the division of disaster emergency services to consider an interjurisdictional agreement or arrangement pursuant to section 37-17.1-08 that the area involved and political subdivisions therein have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provision for mutual aid, but in considering the making of an interjurisdictional arrangement to accomplish the purpose of this section, the division need not consider establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes.~~

SECTION 14. AMENDMENT. Section 37-17.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-15. Weather modification. The division of disaster emergency services management shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activity severe enough to constitute a disaster. If the division determines that precipitation that may result resulting from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall direct the officer or agency empowered to issue permits for weather modification operations to suspend the issuance of the permits. Thereupon, no permits may be issued until the division informs the officer or agency that the danger has passed.

SECTION 15. AMENDMENT. Section 37-17.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-16. Immunity and exemption.

1. All functions hereunder and all other activities relating to ~~disaster~~ emergency services management are hereby declared to be governmental functions. Neither the state nor any ~~political subdivision~~ county or city or its departments and agencies, or any disaster or emergency worker complying with or reasonably attempting to comply with this chapter, or any ~~order, rule, or regulation promulgated~~ executive order or disaster or emergency operational plan pursuant to the provisions of this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any ~~political subdivision~~ county or city of the state, except in case of willful misconduct, gross negligence, or bad faith, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section shall not affect the right of any person to receive benefits to which ~~he~~ they would otherwise be entitled under this chapter, or under the workmen's compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.
2. Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized disaster or emergency worker who shall, in the course of performing his their duties, practice such professional, mechanical, or other skill during a disaster or emergency.

SECTION 16. AMENDMENT. Section 37-17.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-17. No private liability. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of ~~sheltering persons~~ emergency management activities during an actual, impending, mock or practice ~~attack~~ disaster or emergency, shall, together with ~~his~~ their successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises or for loss of, or damage to, the property of such person.

SECTION 17. AMENDMENT. Section 37-17.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-18. Appropriations and authority to accept services, gifts, grants, and loans.

1. Each political subdivision county or city shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision county or city for the payment of expenses of its local disaster emergency services management organization.
2. Whenever the federal government or any agency or officer thereof or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision county or city thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of disaster emergency services management, the state, acting through the governor or disaster the emergency services management director or coordinator, or such political subdivision county or city, acting through its executive officer or governing body, may accept such offer and may authorize any officer of the state or of the political subdivision, county, or city, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision county or city, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

SECTION 18. AMENDMENT. Section 37-17.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-19. Temporary housing for disaster victims and site acquisition and preparation. In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a disaster or emergency, a program of temporary housing for disaster victims adversely affected by a major disaster or emergency in those cases where such disaster or emergency victims are unable to meet their needs through assistance under provisions other than section 404 of the Disaster Relief Act or through other means. The governor shall be authorized:

1. To receive temporary housing units to be occupied by disaster or emergency victims from any agency of the United States and to make such units available to any political subdivision county or city of the state.
2. To assist any political subdivision county or city of this state which is the site of temporary housing for disaster or emergency victims, to acquire and to prepare sites necessary for such temporary housing, and to "pass through" funds made available by any agency, public or private.

Any ~~political subdivision~~ county or city of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster or emergency victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

The governor is authorized to make rules and regulations shall establish guidelines necessary to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

SECTION 19. AMENDMENT. Section 37-17.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-20. Community disaster loans. In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a ~~presidential-declared~~ presidentially-declared "major disaster", a program of community disaster loans in those cases where communities are unable to meet or provide for ~~its~~ their essential governmental functions through assistance under provisions other than section 414 of the Disaster Relief Act or through other means. Upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a ~~major~~ disaster and has demonstrated a need for financial assistance to perform its governmental functions to apply to the federal government, on behalf of the local government, for a loan; and to receive and disburse the proceeds of any approved loan to any applicant local government.

The governor shall be authorized:

1. To determine the amount needed by any applicant local government to restore or resume its governmental functions, and to certify the same to the federal government; ~~provided, however, that no.~~ No application amount shall exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the ~~major~~ disaster occurs.
2. To recommend to the federal government, based upon ~~his~~ the governor's review, the cancellation of all or any part of repayment when, within three fiscal years following the ~~major~~ disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a ~~municipal~~ operation character county or city.

SECTION 20. AMENDMENT. Section 37-17.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-21. ~~Debris and wreckage removal in disaster emergencies or major disasters or emergencies.~~ In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143], the governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a disaster or emergency, a program of debris and wreckage removal caused by a ~~major disaster~~ in those cases where such debris and wreckage removal cannot be provided under provisions other than section 403 of the Disaster Relief Act or through other means. The governor shall be authorized:

1. Notwithstanding any other provision of law, through the use of state departments or agencies, or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety, or threaten public or private property, in any disaster or emergency declared by the governor ~~or major disaster as declared by the president~~.
2. To accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

Authority under sections 37-17.1-19, 37-17.1-20, and 37-17.1-21 shall not be exercised, except upon state-owned lands, unless the affected local government, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

Whenever the governor provides for clearance of debris or wreckage pursuant to subsections 1 or 2, employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

Except in cases of willful misconduct, gross negligence, or bad faith, any state employee or agent complying with orders of the governor and performing duties pursuant thereto under sections 37-17.1-19, 37-17.1-20, and 37-17.1-21 shall not be liable for death of or injury to persons or damage to property.

The governor is authorized to make rules and regulations shall establish guidelines to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

SECTION 21. AMENDMENT. Section 37-17.1-22 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-22. Disaster or emergency response and recovery costs. Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a "major" disaster or an emergency declared by the president of the United States, ~~the state coordinating officer for that disaster emergency as designated by the governor~~ director of the division of emergency management shall determine and record the costs of the state response and recovery operations in accordance with an agreement with the federal government or in accordance with procedures established by the governor in the case of a state-declared disaster or emergency. Immediately following the response or recovery operations, or prior thereto if deemed necessary by the governor, the governor shall make application to the state emergency commission for a grant of funds ~~from the natural disaster fund or other available funds in the state treasury~~ in an amount equal to the response and recovery costs of the state. Notwithstanding other provisions of chapter 54-16, it shall be conclusively presumed upon receipt by the emergency commission of such application from the governor that ~~an a disaster or~~ an a disaster or emergency exists, and such commission shall ~~forthwith~~ immediately grant and direct the transfer to the department of the governor's designated representative of an amount equal to that certified in such application by the governor.

SECTION 22. REPEAL. Section 37-17.1-08 of the North Dakota Century Code is hereby repealed.

Approved March 1, 1985

CHAPTER 399

SENATE BILL NO. 2380
(Senators Lodoen, Ingstad)
(Representatives Sauter, Schneider, Conmy)

CRISIS RELOCATION PROGRAM EXPENDITURES PROHIBITED

AN ACT to create and enact a new section to chapter 37-17.1 of the North Dakota Century Code, relating to the expenditure of disaster planning funds.

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

SECTION 1. A new section to chapter 37-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Crisis relocation plans - Public expenditures prohibited. The expenditure of or authorization for an expenditure by any official or employee of the state or any political subdivision of the state of any funds, whether derived from the state, federal government, or any other source, for the purpose of planning, developing, or implementing any type of crisis relocation program or plan, the primary purpose of which is to effect a mass evacuation of this state's civilian population in the event of the threat of nuclear war, is prohibited. This section does not prohibit the use of state, federal, or other funds for other disaster planning needs and activities as authorized by law.

Approved March 22, 1985

CHAPTER 400

SENATE BILL NO. 2112
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Veterans' Affairs)

ADMINISTRATIVE COMMITTEE ON VETERANS' AFFAIRS

AN ACT to amend and reenact section 37-18.1-01 of the North Dakota Century Code, relating to the administrative committee on veterans' affairs.

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

SECTION 1. AMENDMENT. Section 37-18.1-01 of the North Dakota Century Code is hereby amended and reenacted to read 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, shall hereinafter be referred to as the committee. The committee shall consist of four ex officio nonvoting members and ~~twelve~~ fifteen voting members. The adjutant general, the center director of the veterans' administration, the executive director of job service North Dakota, and the director of institutions shall be 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, ~~and~~ the veterans of World War I, ~~U-S-A- II, Korea, and Vietnam, (amvets), and Vietnam veterans' of America,~~ U-S-A- 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 ~~twelve~~ fifteen nominees, three from each list, ~~four~~ five of whom shall be appointed to a term of three years, ~~four~~ five of whom shall be appointed to a term of two years, and ~~four~~ five of whom shall 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 ~~four~~ five nominees, to fill expiring terms of voting members of the committee. Each such appointment shall be for a term of three years, or until a successor is appointed and qualified. All terms shall 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 shall be made for the remainder of the unexpired term.

Approved March 22, 1985

MINING AND GAS AND OIL PRODUCTION

CHAPTER 401

HOUSE BILL NO. 1521
(R. Anderson)

GAS FLARING

AN ACT to limit flaring of gas.

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

SECTION 1. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority. As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well, or until June 30, 1986, for wells in production prior to July 1, 1985. Thereafter, flaring of gas from the well must cease and the well must either be capped or connected to a gas gathering line. For a well operated in violation of this section, the producer shall pay royalties to royalty owners and gross production tax imposed under section 57-51-02 upon the value of the flared gas. The industrial commission shall enforce this section and, for each well operator found to be in violation of this section, shall determine the value of flared gas for purposes of payment of gross production tax and royalties under this section and its determination is final. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available.

Approved March 29, 1985

CHAPTER 402

SENATE BILL NO. 2471
(D. Meyer)

INDUSTRIAL COMMISSION RULE VIOLATIONS

AN ACT to amend and reenact subsection 3 of section 38-08-14 and section 38-08-16 of the North Dakota Century Code, relating to the suspension of orders of the industrial commission and fixing the amount of supersedeas bonds and penalties imposed upon violators of rules, regulations, or orders of the industrial commission; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 3 of section 38-08-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. At the time of filing the notice of appeal, if an application for the suspension of the order is filed, the commission ~~shall~~ may enter an order suspending the order complained of and fixing the amount of the 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 must 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 shall suspend ~~suspend~~ suspending the order complained of is effective until its final disposition upon appeal. The bond shall 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 shall 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.

SECTION 2. AMENDMENT. Section 38-08-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-16. Civil penalty. Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission shall be subject to a civil penalty to be imposed by the commission not to exceed twelve thousand five hundred dollars for each offense, and each day's violation shall be a separate offense, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. Any such civil penalty may be compromised by the commission. The penalties provided in this section, if not paid, shall be recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of the penalty shall not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 27, 1985

CHAPTER 403

SENATE BILL NO. 2455
(Senator D. Meyer)
(Representative Murphy)

OIL AND GAS PRODUCTION COMMINGLING

AN ACT to create and enact a new section to chapter 38-08 and a new section to chapter 64-02 of the North Dakota Century Code, relating to commingling of production from two or more oil or gas wells in a storage facility, metering of oil and gas production, and testing of oil and gas production meters; and to provide an appropriation.

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

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Commingling of production - Central production facility - Metering of production - Testing of meters. A producer may not commingle production from two or more oil or gas wells with diverse ownership in a storage facility without prior approval of the commission after notice and opportunity for hearing. If the commingling of production is for the express purpose of separating, metering, holding, and marketing of production, the owner of the wells shall apply to the commission for approval of the proposed commingling of production at a storage facility. If wells producing into a centralized storage facility have diverse ownership, the production from each well must be measured by meters approved by the commission and tested by the department of weights and measures as provided in section 2 of this Act or production must be measured by some other method the commission has approved after notice and opportunity for hearing. If wells producing into a centralized storage facility have common ownership, including the common ownership of the working interest, the common ownership of the royalty ownership, and the common ownership of any overriding royalty owners, the production from each well need not be measured on meters approved by the commission if the owner of the wells demonstrates to the commission that the production from each well can be accurately determined at reasonable intervals by other means.

SECTION 2. A new section to chapter 64-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Duty of department to test accuracy of oil and gas production meters. The department shall randomly test and certify the accuracy of meters used to measure oil and gas production under section 1 of this Act. The owner of the well shall contract for the testing of all meters with an independent contractor or may employ a qualified meter specialist approved by the department. The owner of the well shall repair or replace any meter that has a variance in excess of department standards. The department shall, in accordance with chapter 28-32, determine the fee to be charged by the department for testing meters. All fees collected under this section must be paid to the general fund in the state treasury.

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 \$163,800, or so much thereof as may be necessary, to the public service commission for the purpose of implementing section 2 of this Act for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 15, 1985

CHAPTER 404

HOUSE BILL NO. 1544
(Hughes)

OIL AND GAS RESERVOIR DATA FUND

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, to establish a fund for providing oil and gas reservoir data compiled by the industrial commission to state, federal, and county departments and agencies, and members of the general public; and to provide an appropriation.

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

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Oil and gas reservoir data fund - Appropriation. There is hereby established an oil and gas reservoir data fund to be used for defraying the costs of providing reservoir data compiled by the commission to state, federal, and county departments and agencies, and members of the general public. All moneys collected pursuant to section 38-08-04 for providing reservoir data under this section shall be deposited in the oil and gas reservoir data fund. This fund shall be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and shall be used and disbursed solely for the purpose of paying the current cost of providing such information as determined by the commission, based on actual costs.

Approved March 14, 1985

CHAPTER 405

HOUSE BILL NO. 1399
(Martin, Knudson)

DRILL HOLE PLUGGING REQUIREMENTS

AN ACT to amend and reenact sections 38-08.1-06 and 38-08.1-06.1 of the North Dakota Century Code, relating to the plugging of drill holes for subsurface mineral exploration; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 38-08.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-06. Duty to plug drill holes.

1. ~~Unless otherwise agreed to between the owner of the surface or lessee and the person required by this section to plug the drill hole,~~ Drill holes must be plugged and abandoned as required by this section.
2. The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the board of county ~~commissioners~~ commissioners in writing that it intends to plug and abandon the drill hole. The required notice must be received by the commission board at least twenty-four hours prior to the time plugging activities are scheduled to begin. The notice must include the date and time the activities are expected to commence, the location by section, township, and range of the holes to be plugged, and the name and telephone number of the person in charge of the plugging operations. A copy of the notice must be sent to the landowner or lessee at the same time it is sent to the board of county ~~commissioners~~ commissioners. The seismic company shall notify the board of county commissioners in writing upon completion of the plugging operation. Any person violating this subsection is guilty of an infraction.

3. All seismic shot holes must be plugged as soon after being used as reasonably is practicable; however, they may not remain unplugged for a period of more than thirty days unless, upon application, the board of county commission commissioners grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped during the period between drilling and final plugging.
4. The plug must have permanently affixed to it a durable nonrusting metal or plastic tag or plate imprinted with the name of the operator responsible for the plugging of the hole and the operator's permit number.
5. The surface around each seismic shot hole must be restored to its original condition insofar as restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud stacks, and any other debris or material not native to the area must be removed from the drill site and deposited in a sanitary landfill.

SECTION 2. AMENDMENT. Section 38-08.1-06.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-06.1. Plugging requirements - Liability for damage.

1. Except as provided in this section, all seismic holes must be filled:
 - a. Filled with a bentonite-water slurry by hose injection and displacement upwards from the bottom up. The slurry mixture must have a marsh funnel viscosity of sixty seconds or greater per quart [0.95 liter] (subject to field verification on site), and must contain a minimum of twenty-eight pounds [12.70 kilograms] of commercial plugging bentonite per forty-two gallons [158.99 liters] of water. A mechanical bridge plug must be set on top of the slurry mixture followed by a cement plug at least one foot [30.48 centimeters] in length. The top of a cement plug must be at least four feet [1.22 meters] below the ground surface. The remainder of the hole must be filled with native surface material nonmetallic perma-plug, imprinted or tagged with the name and permit number of the person conducting the geophysical exploration, must be set four feet [1.22 meters] below the surface and, above the perma-plug, native surface material must be used to fill the seismic hole to the surface; or
 - b. Preplugged using coarse-ground, sodium bentonite chunks of sizes not less than three-eighths of an inch [9.53 millimeters] nor greater than seven-eighths of

an inch [22.23 millimeters] in diameter, which have not been chemically treated. Sodium bentonite chunks in packages that have moisture contents lower than fifteen percent or higher than nineteen percent, or with greater than fifteen percent inert solids may not be used. Under this subdivision, a seismic hole must be preplugged with a minimum of one hundred pounds [45.36 kilograms] of sodium bentonite for each fifty feet [15.24 meters] of hole depth, placed above the explosive charge, with the remainder of the hole plugged with drill cuttings to within four feet [1.22 meters] of the surface. Backfill shot holes must be filled with sodium bentonite to four feet [1.22 meters] below the surface and with a filling of native material to the surface.

2. Seismic holes that penetrate artesian water deposits must be stabilized with a cement slurry from the maximum depth attainable up to approximately four feet [1.22 meters] below the ground surface or with sodium bentonite chunks pursuant to subdivision b of subsection 1 of this section, and stabilization must occur within a reasonable length of time. The cement slurry or sodium bentonite chunks must be of sufficient density to contain water to their native strata. The remainder of the hole must be filled with native surface material.
3. Seismic holes that penetrate artesian water deposits and encounter alkaline or saline waters must be plugged immediately as set forth in subsection 1 except that a heavier slurry mixture must be used with the addition of inorganic drying or stabilizing chemicals such as calcium chloride, sodium bicarbonate, or soda ash to assist in the effective plugging and stability of the bentonite column in the hole.
4. The seismic company is liable for all damages resulting from failure to comply with the provisions of this section.

Approved March 31, 1985

CHAPTER 406

HOUSE BILL NO. 1106
(Committee on Natural Resources)
(At the request of the Public Service Commission)

MINING PROHIBITED IN CERTAIN AREAS

AN ACT to amend and reenact section 38-14.1-07 of the North Dakota Century Code, relating to mining prohibited in certain areas.

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

SECTION 1. AMENDMENT. Section 38-14.1-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-07. Mining is prohibited. After July 1, 1979 August 3, 1977, and subject to valid existing rights, no surface coal mining operations except those which exist existed on July 1, 1979 August 3, 1977, shall be permitted:

1. On any lands within the boundaries of units of the North Dakota state park system, the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the national wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act [Pub. L. 90-542; 82 Stat. 906; 16 U.S.C. 1271 et seq.] and national recreation areas designated by Act of the Congress of the United States.
2. On any federal lands within the boundaries of any national forest unless the requirements of 30 U.S.C. 1272(e)(2) are met.
3. Within three hundred feet [91.44 meters] of any publicly owned park or places included in the state historic sites registry or the national register of historic places unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or the historic site.
4. Within one hundred feet [30.48 meters] of the outside right-of-way line of any public road, except where mine

access roads or haulage roads join such right-of-way line and except that the commission with the approval of the proper authority may permit such roads to be relocated or the area affected to lie within one hundred feet [30.48 meters] of such road, if after public notice and the opportunity for public hearing in the locality a written finding is made by the proper authority that the interests of the public and the landowners affected thereby will be protected.

5. Within five hundred feet [152.4 meters] of any occupied dwelling unless approved by the owner thereof and in accordance with the provisions of chapter 38-18, nor within three hundred feet [91.44 meters] of any public building, school, church, community, or institutional building, or within one hundred feet [30.48 meters] of a cemetery.

Approved February 6, 1985

CHAPTER 407

HOUSE BILL NO. 1105
(Committee on Natural Resources)
(At the request of the Public Service Commission)

COAL MINING AND RECLAMATION PERMITS

AN ACT to amend and reenact subdivisions e, f, and g of subsection 1 of section 38-14.1-14, subsection 5 of section 38-14.1-21, and subsection 3 of section 38-14.1-33 of the North Dakota Century Code, relating to permit application requirements for surface coal mining and reclamation operations, permit approval and denial standards for surface coal mining and reclamation operations, and the issuance of permits for surface coal mining and reclamation operations.

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

SECTION 1. AMENDMENT. Subdivisions e, f, and g of subsection 1 of section 38-14.1-14 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- e. If the applicant is a partnership, corporation, association, or other business entity, the following where applicable:
- (1) The names and addresses of every officer, partner, director, or person performing a function similar to a director, of the permit applicant.
 - (2) The name and address of any person owning of record ten percent or more of any class of voting stock of the applicant.
 - (3) A list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation within the any state of North Dakota within the five-year period preceding the date of the application.

- f. A statement of any current or previous surface coal mining permits in ~~the any~~ state of ~~North Dakota~~ held by the applicant and the permit identification for said permits and for each pending application.
- g. A schedule listing any and all notices of violation of this chapter, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201; et seq.], and any law, rule, or regulation of the United States or of the state of North Dakota, or of any department or agency of in the United States or of the state of North Dakota pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation.

SECTION 2. AMENDMENT. Subsection 5 of section 38-14.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Where information available to the commission indicates that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of this chapter in this state or such other applicable air or water environmental protection laws of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et. seq.], or any law or rule of the United States or of the state of North Dakota, or of any department or agency in the United States or the state of North Dakota pertaining to air or water environmental protection, incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application the permit shall not be issued until the permit applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority which has with jurisdiction over such the violation.

SECTION 3. AMENDMENT. Subsection 3 of section 38-14.1-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A permittee who refuses or willfully fails to comply with this chapter shall be ineligible for any further mining permits. After an opportunity for hearing and after a finding by the commission that the permit applicant, or operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter, or the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87;

91 Stat. 445; 30 U.S.C. 1201, et. seq.], of such nature and duration that result in and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter, or the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et. seq.], no permit shall be issued to said permit applicant or permittee.

Approved February 12, 1985

CHAPTER 408

SENATE BILL NO. 2242
(Lips)

SURFACE MINING APPLICATION CERTIFICATION

AN ACT to amend and reenact subdivision r of subsection 1 of section 38-14.1-14 of the North Dakota Century Code, relating to permit applications for surface mining and reclamation operations.

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

SECTION 1. AMENDMENT. Subdivision r of subsection 1 of section 38-14.1-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- r. Cross ~~section~~ sections, maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting all of the following information:
- (1) The nature and depth of the various strata of overburden.
 - (2) The location of subsurface water, if encountered, and its quality.
 - (3) The nature and thickness of any coal or rider seam above the coal seam to be mined.
 - (4) The nature of the stratum immediately beneath the coal seam to be mined.
 - (5) All mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected.

- (6) Existing or previous surface mining limits.
- (7) The location and extent of known workings of any underground mines, including mine openings to the surface.
- (8) The location of aquifers.
- (9) The estimated elevation of the water table.
- (10) The location of spoil, waste, or refuse areas, suitable plant growth material stockpiling areas and, if necessary, stockpiling areas for other suitable strata.
- (11) The location of all impoundments for waste or erosion control.
- (12) Any settling or water treatment facility.
- (13) Constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto.
- (14) Profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the applicant's proposed reclamation plan.

Approved March 29, 1985

CHAPTER 409

SENATE BILL NO. 2254
(Committee on Natural Resources)
(At the request of the Public Service Commission)

CULTURAL RESOURCE MINING AND RECLAMATION

AN ACT to create and enact a new subdivision to subsection 1 of section 38-14.1-14 of the North Dakota Century Code, relating to surface coal mining and reclamation permit application requirements for cultural resources; to amend and reenact section 38-14.1-10, subdivision q of subsection 1 of section 38-14.1-14, subsection 4 of section 38-14.1-21, subsection 1 of section 38-14.1-30, and section 55-03-01 of the North Dakota Century Code, relating to the necessity of a permit, administrative review, permit for investigation, evaluation, or mitigation of adverse effects on cultural resources, permit application requirements for topographic maps, and to permit approval or denial standards.

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

SECTION 1. A new subdivision to subsection 1 of section 38-14.1-14 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Cultural resource information including all of the following:

- (1) A statement evidencing compliance with the requirements of chapter 55-03.
- (2) A cultural resource inventory, including all buildings, structures, and objects referred to in section 55-03-01, covering the proposed permit and adjacent area conducted in accordance with guidelines developed by the state historic preservation office and the superintendent of the state historical board.
- (3) An evaluation of each cultural resource site which will be affected by any surface coal mining and reclamation operation. The evaluation must include sufficient information to allow the

superintendent to determine if the cultural resource site is significant in accordance with the national register criteria [36 CFR 60.4] and guidelines established by the superintendent.

- (4) An appropriately scaled map identifying the location of each cultural resource site determined significant by the superintendent within the proposed permit area and the adjacent area.
- (5) A description of adverse effects on significant cultural resources that may result from the proposed surface coal mining operations.
- (6) A statement that the permit applicant will inform the superintendent and the commission of any discovery within the permitted area of previously unrecorded archeological, cultural, or historic materials and allow reasonable time for the superintendent to determine the significance of the discovery and, if determined significant, to approve a mitigation plan.
- (7) A plan approved by the superintendent that has been or will be used to mitigate adverse effects on significant sites that are known, or a statement that such a plan will be approved and implemented prior to any adverse effects. Any mitigation plan which has not begun implementation within five years of plan approval is subject to review by the superintendent.

SECTION 2. AMENDMENT. Section 38-14.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-10. Necessity of permit - Exception. It shall be unlawful for any operator to engage in surface coal mining operations without first obtaining from the commission a permit to do so, in such form as is hereinafter provided. All existing surface coal mining operations shall on July 1, 1979, comply with the provisions of this chapter and all regulations promulgated pursuant thereto, except that lands from which the coal has been removed prior to July 1, 1979, shall be governed by the reclamation standards that were in effect at the time of coal removal from such lands. Any person or operator may engage in the inventorying and evaluation of cultural resources upon compliance with section 55-03-01 and may implement a cultural resource mitigation plan approved by the superintendent of the state historical board prior to applying for or receiving an approved surface coal mining and reclamation permit.

SECTION 3. AMENDMENT. Subdivision g of subsection 1 of section 38-14.1-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- g. Topographic maps to an appropriate scale, as prescribed by the commission by regulation, clearly showing the land to be affected as of the date of the application. Such a map, among other things specified by the commission, shall show all of the following information:
- (1) All manmade features.
 - (2) ~~All significant known archaeological sites existing on the date of application.~~
 - (3) The holders of record (surface and subsurface) of any leasehold interest in the property.
 - (4) (3) Any purchaser of record (surface and subsurface) of the property under a real estate contract.
 - (5) (4) The operator, if he is a person different from the permit applicant.
 - (6) (5) If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent.

SECTION 4. AMENDMENT. Subsection 4 of section 38-14.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The commission may delete certain areas from a permit or revision application, reject the application, require the permit applicant to amend the application or any part of such application, including any mining plan, or require any combination of the foregoing, if:
 - a. The commission finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of North Dakota with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides, water pollution, or permanent destruction of land for agricultural purposes without approved rehabilitation for other uses cannot feasibly be prevented.
 - b. The commission finds that the proposed surface coal mining operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public

road, stream, lake or other public or private property other than property subject to a coal lease.

- e- The commission finds that the proposed surface coal mining operation would adversely affect any historical, archaeological, or paleontological site. If mining is permitted, the commission, in consultation with the state historical board, shall establish procedures for the protection and preservation of such sites throughout the surface coal mining operation.

Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in this subsection, it may make such changes in the permit as it may deem necessary to avoid such described conditions.

SECTION 5. AMENDMENT. Subsection 1 of section 38-14.1-30 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Within thirty days after a permit applicant is notified of a ruling by the commission pursuant to section 38-14.1-20, or after an operator or permittee is issued a notice or order pursuant to subdivision a or b of subsection 1 of section 38-14.1-28, or after the commission disapproves an application for release of all or a portion of a performance bond under section 38-14.1-17, or after the superintendent of the state historical board renders a decision on an application for approval of a cultural resources mitigation plan under sections 1 and 2 of this Act, such applicant, or operator, or permittee, or any person with an interest which is or may be adversely affected by such ruling, notice, or order or by an order modifying, vacating, or terminating a notice or order, may request and thereby initiate formal hearing procedures before the commission. The right to such administrative review shall be forfeited if not requested within thirty days of such notification of any ruling or issuance of a notice of violation or order as provided in this subsection. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

SECTION 6. AMENDMENT. Section 55-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee. Any individual, organization, institution, or company engaged on one's own behalf or on behalf of another in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands

in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, North Dakota Century Code section 38-14-1-21, or North Dakota Administrative Code section 69-05-2-08-03, 69-05-2-09-08, 69-06-08-01, or 69-06-08-02, section 1 of this Act first shall obtain an annual permit from the superintendent of the state historical board of North Dakota. Such permit may be issued when an application in such form and including such information as prescribed by the superintendent has been filed with such officer. Each such application shall be accompanied by a filing fee of fifty dollars. The superintendent may waive the fee requirement if the applicant is an instrumentality of the state of North Dakota. Following issuance of the annual permit, the permittee shall submit to the state historical society of North Dakota payment in the amount of twenty-five dollars with every cultural resources identification, evaluation, and mitigation report submitted to the superintendent in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under chapters 10-24 through 10-28 does not have to pay the fee for filing the report.

Approved March 22, 1985

CHAPTER 410

HOUSE BILL NO. 1569
(Keller, Murphy, O. Hanson)

RECLAMATION OF LAND MINED FOR GRAVEL OR SAND

AN ACT to create and enact a new section to chapter 38-16 of the North Dakota Century Code, relating to the reclamation of lands affected by certain gravel and sand surface mining operations; and to provide a penalty.

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

SECTION 1. A new section to chapter 38-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

Gravel and sand surface mining operations - Reclamation - Civil action - Penalty. Any surface mining operator conducting a gravel or sand surface mining operation on land in this state owned by another person shall, upon completion or abandonment of the surface mining operation, reclaim the affected land. Each surface mining operator shall negotiate with the landowner a written agreement providing for the reclamation of the affected land. The reclamation agreement must, at a minimum, provide for restoration by the surface mining operator of the affected land as nearly as possible to its original contour and productivity, unless the affected land is to be used for other purposes as agreed upon between the surface mining operator and the landowner, within a time period agreed upon between the parties, but within one year after the final cessation of surface mining operations. A landowner may bring a claim for relief in any appropriate district court against a surface mining operator who has failed to reclaim properly affected land pursuant to a reclamation agreement under this section. In an action under this section, a surface mining operator is liable for damage in an amount necessary to reclaim the land. Any person violating any provision of this section is guilty of a class B misdemeanor.

Approved March 22, 1985

CHAPTER 411

SENATE BILL NO. 2095
(Legislative Council)
(Interim Tenneco Plant Committee)

TENNECO PLANT IMPACT ASSISTANCE PACT

AN ACT to create the Tenneco plant impact assistance interstate compact.

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

SECTION 1. Definitions. As used in this compact, unless the context clearly requires a different construction:

1. "Commission" means the Tenneco plant impact assistance interstate compact commission.
2. "Compact" means the Tenneco plant impact assistance interstate compact.
3. "Fund" means the Tenneco plant impact assistance fund.
4. "Party states" means the states of North Dakota and Montana.
5. "Plant" means the coal gasification plant and related mining and other facilities planned for construction in the Beach, North Dakota-Wibaux, Montana area by the Tenneco company or its legal successor in interest.

SECTION 2. Policy and purpose. The states of North Dakota and Montana recognize that the development of the natural resources of both states must be accomplished in a manner which best benefits and protects the health, safety, and economic well-being of the citizens of both states. The party states recognize that social and economic impacts may occur in the areas in both states where the development of natural resources is taking place and that these impacts accrue to both states without regard to the existence of political boundaries. It is further recognized that the protection of the health, safety, and economic well-being of the citizens of the party states can be accomplished through the cooperation of the party states in providing the necessary assistance to the areas in the party states affected by the development of natural resources.

The party states recognize that the Tenneco company is planning to construct and operate a coal gasification facility in Montana near the Beach, North Dakota-Wibaux, Montana area. The proposed facility is expected to cause significant social and economic impacts in that area which are beyond the financial capacities of the affected local governmental entities in both states to mitigate.

It is the purpose of this compact to provide the means for a cooperative effort between the party states to ensure the existence of financial support to the areas in both states necessary to mitigate the resulting impacts from the Tenneco coal gasification plant.

SECTION 3. Entry into force and termination.

1. This compact is effective when the party states have enacted the compact by appropriate legislation in substantially similar form and when the necessary permits for siting of the plant have been approved and issued under the North Dakota Energy Conversion and Transmission Facility Siting Act or the Montana Major Facility Siting Act.
2. This compact is terminated when unanimously agreed to by the party states or when the plant has permanently ceased operations. In the event of termination, all rights established under this compact continue unimpaired. The unobligated moneys and assets of the fund at termination must be paid over to the party states in proportion to the coal mined for the plant in each respective state.

SECTION 4. Tenneco plant impact assistance commission.

1. There is hereby created an interstate administrative agency to be known as the Tenneco plant impact assistance commission. The commission must be composed of the director of the North Dakota energy development impact office; the chairman of the Montana coal board; one Montana resident, residing in the area impacted by the plant, appointed by the governor of Montana; one North Dakota resident, residing in the area impacted by the plant, appointed by the governor of North Dakota; one person from Montana appointed by the chairman of the Montana legislative council; and one person from North Dakota appointed by the chairman of the North Dakota legislative council. The governors and chairmen of the legislative councils of each party state shall appoint their party state's respective commission members for terms and conditions and in a manner as each party state may choose. The commission members appointed by the party states shall unanimously choose an additional member who shall serve a term of two years and who shall, when present, act as chairman of the commission. The

- additional member may be removed as a member of the commission by a vote of three of the other commission members. There shall be no alternates or proxies for commission members.
2. Each commission member is entitled to one vote on any subject matter before the commission. No action of the commission is binding unless a majority of the total membership cast affirmative votes.
 3. The commission shall meet at least once each six months and shall also meet upon the call of the chairman or upon the call of two or more members. Meetings of the commission may be held in any place in either state the commission determines to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations can be found. The commission shall afford reasonable public notice and opportunity for comment at each meeting. All meetings of the commission must be open to the public. All commission action and decisions must be appropriately recorded.
 4. Each party state is responsible for the payment of the compensation and necessary expenses of their respective commission members. All other expenses, including the compensation and expenses of the chairman, resulting from administration of the compact must be allocated to and borne one-half by each party state. The commission shall submit to the governor or designated officer of each party state a budget of its estimated expenditures for the relevant period and as required by the laws of each party state for presentation to the legislative assembly of each party state. The commission budget report must contain specific recommendations of the amounts to be appropriated by each party state.
 5. The commission shall keep accurate records and accounts of all receipts and disbursements. The commission shall engage an independent certified public accountant who shall annually audit all receipts and disbursements of commission funds and submit an audit report to the commission. The commission shall forward copies of the audit report to the legislative assemblies of each party state. The accounts of the commission must be open at any reasonable time for inspection by the party states.
 6. The commission shall adopt and publish bylaws and administrative rules as are necessary for the performance of its powers and duties under this compact. The commission shall file copies of any bylaws and rules adopted with the North Dakota energy development impact office and Montana coal tax oversight subcommittee.

7. The commission is a legal entity separate and distinct from the party states. The commission is capable of action in its own behalf and is liable for its own actions. Liabilities of the commission are not liabilities of the party states. Commission members are not personally liable for actions taken by them in their official capacity. The commission may sue and be sued in its official capacity in any federal court of the party states and may accept for any of its purposes and functions donations, grants of money, equipment, supplies, materials, and services from any person or the federal government.
8. The commission may employ a staff to carry out its duties and functions and may contract with any person for the purpose of providing expert consulting services. Employees of the commission shall participate in the federal social security system. The commission may establish additional employee benefit programs to afford terms and conditions of employment similar to those provided to employees of the party states.

SECTION 5. Impact assistance program.

1. There is hereby created the Tenneco plant impact assistance fund to be administered under this compact by the commission. Each party state shall contribute to the fund an amount equal to ten percent of the coal severance tax revenue for coal mined in that state for the plant using the lesser of the coal severance tax rates of the party states. The commission may seek loans and grants from the party states' respective agencies charged with providing financial assistance to coal development impact areas. These moneys must be deposited in the fund. The loan may be repaid out of any moneys in the fund available for that purpose. The commission shall issue evidences of indebtedness as may be required to secure those loans. The commission shall provide financial assistance under this Act using moneys received from a party state's coal impact agency only in the state from which the money is received.
2. The commission shall develop a program for providing loans from the fund to the counties, cities, school districts, or other appropriate political subdivisions in the party states affected by the development and operation of the plant. The commission shall prescribe the terms and conditions of the loans. An entity receiving a loan from the fund shall execute a warrant as evidence of the loan. The warrant must bear interest at a rate not to exceed six percent and is payable from any moneys available to the governing entity for repayment of indebtedness. The warrants must be negotiable. The commission shall deposit any proceeds from the sale of the warrants in the fund.

The proceeds are not subject to taxation by the party states or by any political subdivision of the party states.

3. The commission shall develop a plan for providing financial grants from the fund for services and facilities to the counties, cities, school districts, and other appropriate political subdivisions in the party states affected by the development and operation of the plant. The commission shall make grants to counties, cities, school districts, and other political subdivisions in the party states according to procedures and criteria established by rule.
4. The grants and loans from the fund are to be provided for the purpose of mitigating impacts affecting governmental services, and directly necessitated by the construction and operation of the plant. All loan and grant applications and presentations to the commission must be made by an appointed or elected governmental official with authority to represent the political subdivision seeking the grant. The commission shall not provide loans or grants from the fund for the purpose of providing marriage or guidance counseling services, programs to alleviate other sociological impacts, or service or facilities to meet secondary impacts.

SECTION 6. Amendment and statutory construction.

1. This compact may be amended by the party states in the same manner as is required to ratify the compact.
2. Nothing in this compact may be construed to abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress.

Approved March 27, 1985

MOTOR VEHICLES

CHAPTER 412

SENATE BILL NO. 2164
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

HOUSE CARS

AN ACT to amend and reenact subsection 23 of section 39-01-01 and section 39-18-01 of the North Dakota Century Code, relating to the definition of house car and the sale of house cars.

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

SECTION 1. AMENDMENT. Subsection 23 of section 39-01-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23. "House car" means a motor vehicle which has been reconstructed or manufactured for private use as ~~sleeping or living quarters~~ a temporary or recreational dwelling and having at least four of the following permanently installed systems:
- a. Cooking facilities;
 - b. Ice box or mechanical refrigerator;
 - c. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both;
 - d. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both;
 - e. Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system;
 - f. A 110-115 volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both or a liquefied petroleum system and supply.

SECTION 2. AMENDMENT. Section 39-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-18-01. Mobile home dealer's license - Fees - Dealer's plates. No person, partnership, or corporation shall engage in the business of buying, selling, or exchanging of mobile homes, or advertise or hold himself or itself out to the public as being in the business of buying, selling, or exchanging of mobile homes without first being licensed to do so as hereinafter provided.

Application for dealer's license and renewal license shall be made to the motor vehicle department on such forms as the department shall prescribe and furnish, and such application shall be accompanied by an annual fee of twenty-five dollars. Such dealer's license shall expire on December thirty-first of each year, and application for renewal of such dealer's license shall be made on or before the expiration of the current dealer's license.

A mobile home dealer's license shall be issued only to those who will maintain a permanent office and place of business, and an adequate service department, during the licensing year, and will abide by all the provisions of law pertaining to mobile home dealers.

In addition, the dealer shall maintain his business records in one central location.

Upon the payment of a fee of five dollars for each plate, the department shall register and issue dealer's license plates for use on any mobile homes owned by the licensed dealer, and such mobile homes bearing such dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by such dealer, his agents and servants, during the year of such registration. Such dealer's license plates shall expire on December thirty-first of each year.

The term "mobile home" as used in this chapter shall include and shall have the same meaning as "housetrailer", and both terms shall have the meaning prescribed in subsection 74 of section 39-01-01.

Any mobile home dealer licensed under the provisions of this chapter may sell ~~motor powered mobile homes~~ house cars without being licensed under the provisions of chapter 39-22.

Approved March 27, 1985

CHAPTER 413

HOUSE BILL NO. 1186
(Committee on Transportation)
(At the request of the Highway Patrol)

MODULAR UNIT DEFINED

AN ACT to create and enact two new subsections to section 39-01-01 of the North Dakota Century Code, relating to definitions regarding motor vehicles.

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

SECTION 1. Two new subsections to section 39-01-01 of the 1983 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Modular unit" includes every factory fabricated transportable building unit designed to be incorporated with similar units at a building site into a modular structure to be used for residential, commercial, educational, or industrial purposes.

"Superintendent" means the superintendent of the North Dakota state highway patrol, acting directly or through his authorized employees.

Approved March 14, 1985

CHAPTER 414

SENATE BILL NO. 2362
(Senators Matchie, Wenstrom)
(Representatives Opedahl, Kretschmar)

SENIOR CITIZENS' VEHICLES UNDER GOVERNMENTAL INSURANCE

AN ACT to authorize the inclusion of motor vehicles of senior citizens groups in state or political subdivision insurance policies.

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

SECTION 1. Senior citizen group motor vehicle - Availability of coverage under political subdivision policies. Any political subdivision may provide for the inclusion of buses, vans, or other motor vehicles used by senior citizens groups to transport members, in a motor vehicle insurance policy of the political subdivision. The political subdivision may require payment by a senior citizens group for any increase in the premium rate charged to the political subdivision which is attributable to the coverage provided to that senior citizens group. The political subdivision may provide for a payment procedure to require the payment of any premium or premium portion attributable to the coverage provided for the senior citizens group.

SECTION 2. Senior citizen group motor vehicle - Availability of coverage under state policies. Except as otherwise provided in this section, any insurance policy providing coverage of state-owned motor vehicles must provide, at the request of a senior citizens group prior to the issuance or renewal of the policy, for the inclusion of buses, vans, or other motor vehicles used by the senior citizens group to transport members. The state agency negotiating the insurance policy may require payment by a senior citizens group for any increase in the premium rate charged to the state agency which is attributable to the coverage provided to that senior citizens group. The state agency shall provide by rule for the payment by the senior citizens group of the premium portion attributable to the group's coverage under the policy. The state agency may refuse to provide coverage to a senior citizens group if the coverage would hinder the ability of or not allow the state to obtain insurance.

Approved March 27, 1985

CHAPTER 415

SENATE BILL NO. 2163
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE DEALER VIOLATION HEARINGS

AN ACT to create and enact a new section to chapter 39-01 of the North Dakota Century Code, relating to administrative hearings on alleged violations of dealer laws; and to amend and reenact sections 39-22-04 and 39-22.3-04 of the North Dakota Century Code, relating to suspension or revocation of motor vehicle dealer's license, and suspension or revocation of motorcycle dealer's license.

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

SECTION 1. A new section to chapter 39-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Hearing on alleged violations. Any person having information that a licensed dealer has violated any provisions of this title may file with the registrar an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the registrar shall set the matter for hearing in Bismarck not less than ten days after copies of the affidavit and notice of hearing have been mailed to the dealer by registered mail. A record of such hearings must be made by stenographic notes or use of an electronic recording device.

If after such hearing the registrar finds the violation charged in the affidavit has been proved by the evidence, an order shall be served on the licensee revoking or suspending the dealer's license for a period of time to be determined by the registrar. Such action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is ineffective while the appeal is pending.

The registrar shall have the power to appoint an administrative hearing officer to conduct the hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing officer shall submit the findings to the registrar for consideration and final decision.

Any witness called by the prosecution, except a peace officer while on duty, shall receive the same fees and mileage as a witness in a civil case in district court.

SECTION 2. AMENDMENT. Section 39-22-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license. The registrar of motor vehicles may deny an application for a dealer's license or suspend, revoke, or cancel such a license after it has been granted for the following reasons:

1. For any material misstatement by an applicant in the application for the license.
2. For any willful failure to comply with the provisions of this chapter or with any rule or regulation promulgated by the registrar of motor vehicles.
3. For knowingly permitting any salesman to sell or exchange, or offer or attempt to sell or exchange any motor vehicle except for the licensed motor vehicle dealer by whom he is employed, or to offer, transfer or assign any sale or exchange that he may have negotiated to any other dealer.
4. For having violated any law relating to the sale, distribution, or financing of motor vehicles.
5. For having ceased to have an established place of business as herein defined.

~~Such cancellation and revocation shall be done in the manner and according to the procedure described in chapter 28-32.~~

SECTION 3. AMENDMENT. Section 39-22.3-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22.3-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license. The registrar of motor vehicles may deny an application for a dealer's license or suspend, revoke, or cancel such a license after it has been granted for the following reasons:

1. For any material misstatement by an applicant in the application for the license.
2. For any willful failure to comply with the provisions of this chapter or with any rule adopted by the registrar of motor vehicles.
3. For knowingly permitting any salesperson to sell or exchange, or offer or attempt to sell or exchange any motorcycle except for the licensed motorcycle dealer by whom the salesperson is employed, or to offer, transfer,

or assign any sale or exchange that they may have negotiated to any other dealer.

4. For having violated any law relating to the sale, distribution, or financing of motorcycles.
5. For having ceased to have an established place of business as herein defined.

Such cancellation and revocation shall be done in the manner and according to the procedure described in chapter 28-32.

Approved March 30, 1985

CHAPTER 416

HOUSE BILL NO. 1085
(Legislative Council)

(Interim Committee on Public Employees Retirement Programs)

HIGHWAY PATROLMEN'S RETIREMENT BENEFITS AND CONTRIBUTIONS

AN ACT to amend and reenact subsection 1 of section 39-03.1-09, sections 39-03.1-10, 39-03.1-12, and 39-03.1-14 of the North Dakota Century Code, relating to retirement benefits and state and employee contributions under the highway patrolmen's retirement system.

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

SECTION 1. AMENDMENT. Subsection 1 of section 39-03.1-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every member, except as provided in section 39-03.1-07, shall be required to contribute into the fund a sum equal to seven ten and thirty-hundredths percent of his the member's monthly salary, but not to exceed one hundred thirty-three dollars, which sum shall be deducted from his the member's salary and credited to his the member's account in the fund. A contributor who was paid a refund or severance allowance upon a termination of employment with the patrol and who again becomes a contributor may, at any time prior to retirement, elect to return to the fund the amount which was paid him the contributor as a refund or severance allowance plus regular interest thereon for the period during which the amount was withdrawn from the fund. All such payments must be made in full before a retirement or optional retirement allowance is granted, and, if the contributor elects to make such payment, any survivor's allowance to which his the contributor's survivor would otherwise be entitled shall be reduced by an amount and for such time as will assure that the back payments will be returned to the fund. Every contributor who ~~shall elect~~ elects to make such back payments shall receive full credit under this chapter for all contributions made into the fund and for all service credits to which ~~he~~ the contributor might thereby be entitled.

SECTION 2. AMENDMENT. Section 39-03.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-10. Contributions by the state of North Dakota. The state of North Dakota shall contribute to the fund a sum equal to ~~twelve seventeen and seventy-hundredths~~ percent of the monthly salary or wage of a participating member. ~~Such contribution shall not exceed two hundred twenty-eight dollars per month.~~ 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.

SECTION 3. AMENDMENT. Section 39-03.1-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-12. Retirement allowance. Each contributor qualifying under section 39-03.1-11 ~~shall be~~ is entitled to receive from the fund, for the duration of ~~his the contributor's~~ life, a monthly retirement allowance equal to two and one-half percent of the average monthly salary, ~~not to exceed one thousand nine hundred dollars,~~ for the thirty-six months of service immediately preceding retirement from the patrol, multiplied by twenty-five. For each additional year of service over twenty-five the contributor ~~shall be~~ is entitled to an additional one and one-half percent per month of ~~his the contributor's~~ average salary, as determined above. Credit for additional service of at least one month of an uncompleted year of service shall be given in proportion to the number of months the additional service bears to one full year of service.

SECTION 4. AMENDMENT. Section 39-03.1-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-14. Optional retirement allowance. Each contributor qualifying under section 39-03.1-13 ~~shall be~~ is entitled to receive from the fund, for the duration of ~~his the contributor's~~ life, a monthly optional retirement allowance equal to two and one-half percent of the average monthly salary, ~~not to exceed one thousand nine hundred dollars,~~ for the last thirty-six months of service, times the total number of years served.

Approved March 31, 1985

CHAPTER 417

SENATE BILL NO. 2169
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

REGISTRATION SUSPENSION BY MOTOR VEHICLE
DEPARTMENT

AN ACT to amend and reenact subsection 3 of section 39-04-06 of the North Dakota Century Code, relating to the suspension of motor vehicle registration.

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

* SECTION 1. AMENDMENT. Subsection 3 of section 39-04-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Whenever the ~~commissioner~~ department finds that a vehicle is registered in accordance with a reciprocity agreement, arrangement, or declaration and the vehicle is operated in violation of the agreement.

Approved February 6, 1985

* NOTE: Section 39-04-06 was also amended by section 67 of Senate Bill No. 2079, chapter 317.

CHAPTER 418

SENATE BILL NO. 2166
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

LICENSE PLATES

AN ACT to amend and reenact sections 39-04-08 and 39-04-11, relating to issuance and display of license plates.

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

SECTION 1. AMENDMENT. Section 39-04-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-08. Number plates furnished by the department. The department shall furnish to every motor vehicle owner two number plates for each registered motor vehicle, and one number plate for each registered motorcycle, trailer, or housetrailer. The department may, in its discretion, furnish only one number plate for each registered apportioned vehicle licensed under the international registration plan as authorized in section 39-19-04, truck tractor or semitrailer.

SECTION 2. AMENDMENT. Section 39-04-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-11. Display of number plates and tabs. Except as otherwise specifically provided, no person shall operate or drive a vehicle on the public highways of this state unless the vehicle shall have a distinctive number assigned to it by the department, and two number plates, bearing the distinctive number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of the vehicle, each securely fastened, except number plates assigned to a motorcycle, trailer, or housetrailer shall be attached to the rear thereof. When only one number plate is furnished for a an apportioned vehicle licensed under the international registration plan as authorized in section 39-19-04, truck tractor or semitrailer, the plate shall be attached to the front of the apportioned vehicle or truck tractor and the rear of the semitrailer. The bottom of each number plate shall be at a height of not less than twelve inches [30.48 centimeters] above the

level surface upon which the vehicle stands. As far as is reasonably possible, the plates shall at all times be kept free and clear of mud, ice, or snow so as to be clearly visible and all number plates, markers, or evidence of registration or licensing except for the current year shall be removed from the vehicle. All vehicle license plates issued by the department shall continue to be the property of the state of North Dakota for the period for which the plates are valid. An annual registration tab or sticker for the current registration year shall be displayed on each number plate in those years for which tabs or stickers are issued in lieu of number plates.

Approved March 22, 1985

CHAPTER 419

SENATE BILL NO. 2510
(Mutch)

(Approved by the Committee on Delayed Bills)

PERSONALIZED LICENSE PLATES

AN ACT to amend and reenact section 39-04-10.3 of the North Dakota Century Code, relating to the issuance of personalized plates.

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

SECTION 1. AMENDMENT. Section 39-04-10.3 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 one hundred twenty-five dollars per registration period. The special plates shall 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 shall be issued without additional cost, or upon payment of the applicable registration fee, the special plates shall be transferred to the replacement motor vehicle.

Approved April 4, 1985

CHAPTER 420

HOUSE BILL NO. 1091
(Representative Hamerlik)

ANTIQUÉ MOTOR VEHICLE LICENSES

AN ACT to amend and reenact section 39-04-10.4 of the North Dakota Century Code, relating to number plates and personalized plates on antique motor vehicles.

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

SECTION 1. AMENDMENT. Section 39-04-10.4 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-10.4. Antique automobiles motor vehicles - License and fee.

1. Any motor vehicle which is at least forty years old may be permanently licensed by the department upon the payment of a registration fee of ten dollars. The department shall design and issue a distinctive number plate for this purpose. In lieu of the distinctive number plate, the owner of the motor vehicle may, at the discretion of the registrar, display on the motor vehicle a number plate from the year in which the motor vehicle was manufactured. The number plate from the year of manufacture may not be used in lieu of a distinctive number plate when it would create a duplication of a number in the records-keeping system of the department. A number plate from the year of manufacture must be legible and must be restored to the satisfaction of the department. Notwithstanding section 39-04-11, only one number plate needs to be displayed on a motor vehicle licensed under this subsection.
2. Any motor vehicle which is at least forty years old may, if not licensed under subsection 1, be permanently licensed using a personalized plate issued under section 39-04-10.3, in which case a one time fee of one hundred dollars is due.

Approved February 21, 1985

CHAPTER 421

SENATE BILL NO. 2506
(Senators Nething, Heigaard)
(Representatives Strinden, Mertens)
(Approved by the Committee on Delayed Bills)

CENTENNIAL LICENSE PLATES

AN ACT to allow the North Dakota centennial commission to sell commemorative centennial license plates, to suspend the requirement of two license plates on certain motor vehicles during the issuance of the commemorative license plates, and to authorize the motor vehicle registrar to contract to obtain the commemorative license plates; and to provide an appropriation.

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

SECTION 1. Issuance of commemorative centennial license plates - Temporary authority to use one license plate. The North Dakota centennial commission, created by chapter 583 of the 1983 Session Laws of North Dakota, may issue commemorative centennial license plates for the years 1988 and 1989. The commission may make an agreement with the motor vehicle registrar for procurement of the commemorative license plates. The commission may sell the commemorative license plates at a price that does not exceed ten dollars each. During 1988 and 1989, the operator of a motor vehicle, as defined in section 39-01-01, may display a commemorative centennial license plate issued by the centennial commission on the front of that motor vehicle, in lieu of the distinctive license plate assigned under chapter 39-04. A rear license plate issued under chapter 39-04 must still be displayed.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the highway trust 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 centennial commission for the purpose of defraying the expenses for the issuance of commemorative centennial license plates for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 3. Use of commemorative license plate fees - Appropriations. From the fees collected under section 1 of this Act, the North Dakota centennial commission shall repay to the highway trust fund all moneys received by it up to the amount appropriated under section 2 of this Act. The remainder of the fees collected pursuant to section 1 is hereby appropriated to the use of the North Dakota centennial commission.

Approved March 22, 1985

CHAPTER 422

SENATE BILL NO. 2170
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

TRANSFER OF MOTOR VEHICLE PLATES

AN ACT to amend and reenact section 39-04-12 of the North Dakota Century Code, relating to transfer of number plates.

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

SECTION 1. AMENDMENT. Section 39-04-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-12. Contents of number plates - Size of letters and numerals on plates - Reflectorized - Tabs or stickers - Additional fee.

1. Number plates shall be of metal or other suitable material bearing the name of the state, either in full or by abbreviation, the number of the year, the slogan "Peace Garden State" and a distinctive number for assignment to each vehicle. The distinctive number may be in figures or a combination of figures and letters and shall be of a size clearly distinguishable by law enforcement officers and individuals generally. To reduce highway accidents at night all number plates shall be legible for a minimum distance of one hundred feet [30.48 meters] to an approaching motorist by day or night with lawful headlight beams and without other illumination. Each plate shall be treated with a reflectorized material according to the specifications prescribed by the department. The department shall furnish number plates for a period to be determined by the department, which period shall not be less than four years. In any year during which number plates are not furnished the department shall furnish for each annual registration a year plate, tab, or sticker to designate the year registration. The plate, tab, or sticker shall show the registration year for which issued, and is valid only for that year. It shall be unlawful for any person to transfer to another vehicle the number plate, tab, or sticker during the period or calendar year

for which issued, except as provided in section 39-04-36 and elsewhere in this chapter.

2. The department may, in its discretion, provide to an owner of a fleet of ten or more trailers which are offered for lease and rented to the public, number plates which shall be for a period of not more than six consecutive years and which shall be exempt from the requirements of annual validation evidence. The registration fees for such trailers may be paid for the entire period for which the plates are issued, or the fees may be paid for the first year of the issue and a corporate surety bond may be filed in such sum as the department deems reasonable and adequate in the circumstances, conditioned that the owner will pay the annual fee at the beginning of each annual registration period.

Approved March 31, 1985

CHAPTER 423

HOUSE BILL NO. 1363
(Winkelman)

MOTOR VEHICLE FLEET REGISTRATION

AN ACT to create and enact a new subsection to section 39-04-12 of the North Dakota Century Code, relating to fleet registration of motor vehicles.

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

SECTION 1. A new subsection to section 39-04-12 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The department may provide to an owner of a fleet of one hundred or more vehicles number plates that are valid for as many as six consecutive years and that are exempt from the requirements of evidence of annual validation. The registrant shall file with the department a corporate surety bond in an amount the department determines to be reasonable and adequate, and conditioned that the owner will pay the annual fee at the beginning of each annual registration period for which the number plates are valid.

Approved March 31, 1985

CHAPTER 424

HOUSE BILL NO. 1378
(Representative Conmy)
(Senator Stenehjem)

MOTOR VEHICLE REPAIR, REPLACEMENT, OR REFUND

AN ACT to create and enact a new section to chapter 39-04, seven new sections to chapter 51-07, and a new section to chapter 57-40.4 of the North Dakota Century Code, relating to the duty of a manufacturer to repair a new motor vehicle under warranty or to refund the purchase price or replace the vehicle under certain circumstances; and to provide a penalty.

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

SECTION 1. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Refund of registration fees. Any owner of a motor vehicle, if such motor vehicle is returned to the manufacturer under the provisions of chapter 51-07, may claim a refund in the amount equal to the unused portion of the fee upon the vehicle, computed pro rata by the month, one-twelfth of the annual fee paid for each month of the registration period remaining after the month in which the vehicle was returned, provided the number plates and validation tabs issued for the vehicle are returned to the department.

SECTION 2. A new section to chapter 51-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in sections 2 through 8 of this Act, and unless the context or subject matter otherwise requires:

1. "Consumer" means the purchaser, other than for purposes of resale, of a passenger motor vehicle normally used for personal, family, or household purposes. "Consumer" includes any person to whom the passenger motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to that passenger motor vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.

2. "Passenger motor vehicle" means a passenger motor vehicle as defined in section 39-01-01 or a truck with registered gross weight of ten thousand pounds or less which is sold in this state. "Passenger motor vehicle" does not include a house car, as defined in section 39-01-01.

SECTION 3. A new section to chapter 51-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Duty of manufacturer to repair defective passenger motor vehicles. If a new passenger motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the express warranties or during the period of one year following the date of original delivery of the passenger motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make the repairs necessary to conform the passenger motor vehicle to the express warranties, notwithstanding the fact that the repairs might be made after the expiration of the warranty or one-year period.

SECTION 4. A new section to chapter 51-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Duty to replace defective passenger motor vehicle or refund price - Prerequisite of using available informal dispute settlement process.

1. If the manufacturer, its agent, or its authorized dealer is unable to make the passenger motor vehicle conform to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value of the passenger motor vehicle, after a reasonable number of attempts, the manufacturer shall replace that passenger motor vehicle with a comparable passenger motor vehicle or accept return of the passenger motor vehicle from the consumer, and refund to the consumer the full purchase price, including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds must be made to the consumer, and lienholder, if any, as their interests may appear. A reasonable allowance for use is the amount directly attributable to use by the consumer before the consumer's first report of the nonconformity to the manufacturer, agent, or dealer, and during any subsequent period when the vehicle is not out of service for repair.
2. It is an affirmative defense to any claim under this Act:
 - a. That an alleged nonconformity does not substantially impair the use and market value of the passenger motor vehicle; or

- b. That a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the passenger motor vehicle by a consumer.
3. If a manufacturer has established or participates in an informal dispute settlement procedure which substantially complies with the substantive rules of the federal trade commission, 16 CFR 703, or if the manufacturer participates in a consumer and industry appeals, arbitration, or mediation appeals board whose decisions are binding on the manufacturer, the remedy under subsection 1 is not available to a consumer who has not first resorted to that procedure. The attorney general shall, on application, issue a determination of whether an informal dispute resolution mechanism qualifies under this subsection.

SECTION 5. A new section to chapter 51-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Presumptions.

1. It is presumed that a reasonable number of attempts have been undertaken to make a passenger motor vehicle conform to the applicable express warranties, if:
 - a. The same nonconformity has continued to exist, despite having been subject to repair more than three times by the manufacturer, its agent, or its authorized dealer, within the express warranty term or within one year of the date original delivery of the passenger motor vehicle to a consumer, whichever is the earlier date.
 - b. The passenger motor vehicle is out of service for repair for a cumulative total of at least thirty business days during the warranty term or in a year, whichever is less.
2. The term of an express warranty, the one-year period, and the thirty-day period, are extended by any period during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or other natural disaster.
3. The presumption does not apply against a manufacturer unless the manufacturer has received prior direct notification from or on behalf of the consumer and an opportunity to cure the alleged defect.

SECTION 6. A new section to chapter 51-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exclusive remedy. A consumer who elects to proceed under sections 2 through 8 of this Act is foreclosed from pursuing any

other remedy arising out of the facts and circumstances which gave rise to the claim under sections 2 through 8 of this Act.

SECTION 7. A new section to chapter 51-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitation of actions. An action brought under sections 2 through 8 of this Act must be commenced within six months after the earlier of:

1. Expiration of the express warranty term; or
2. Eighteen months after the date of original delivery of the passenger motor vehicle to a consumer.

SECTION 8. A new section to chapter 51-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Resale of returned passenger motor vehicles prohibited - Penalty. A person may not sell in this state a passenger motor vehicle that was returned to the manufacturer in accordance with sections 2 through 8 of this Act. Violation of this section is a class B misdemeanor.

SECTION 9. A new section to chapter 57-40.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

Refund of tax on returned vehicles. Any owner of a motor vehicle, if such motor vehicle is returned to the manufacturer under the provisions of chapter 51-07, may claim a refund of motor vehicle excise tax on the amount paid to the owner by the manufacturer.

Approved March 31, 1985

CHAPTER 425

SENATE BILL NO. 2168
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

OPERATION OF MOTOR VEHICLE WITHOUT PAYMENT OF REGISTRATION FEES

AN ACT to create and enact a new subsection to section 39-04-37 of the North Dakota Century Code, relating to violations of motor vehicle registration provisions.

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

SECTION 1. A new subsection to section 39-04-37 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To operate a passenger motor vehicle without payment of the registration fees as required in subsection 2 of section 39-04-19.

Approved February 6, 1985

CHAPTER 426

HOUSE BILL NO. 1227
(Representative Opedahl)
(Senator Wenstrom)

CLASS 3 MOTOR VEHICLE OPERATOR'S LICENSES

AN ACT to amend and reenact subsection 3 of section 39-06-14 of the North Dakota Century Code, relating to the vehicles that may be driven by a driver with a class 3 operator's license; and to declare an emergency.

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

* SECTION 1. AMENDMENT. Subsection 3 of section 39-06-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. a. All applicants holding a valid North Dakota operator's license making application for renewal, shall be issued a class 3 license without being subjected to an examination as herein provided.
- b. All applicants, except those holding a valid North Dakota operator's license who will be issued a class 3 license, applying for issuance of operator licenses shall be issued a classified license after having been required to submit to an examination in the type of motor vehicle or combination of vehicles for which license is desired and which license shall authorize the holder to drive the vehicles set forth in a class as follows:
 - (1) Class 1. Any vehicle or combination of vehicles except vehicles under class 4.
 - (2) Class 2. Any vehicle or combination of vehicles except:
 - (a) Vehicles towing a trailer when the trailer being towed has a gross weight in excess of six thousand pounds [2721.55 kilograms].
 - (b) Vehicles under class 4.

* NOTE: Section 39-06-14 was also amended by section 1 of Senate Bill No. 2405, chapter 427.

- (3) Class 3. Any two-axle or tandem-axle vehicle except:
- (a) A truck tractor combination as defined in subsection 76 of section 39-01-01.
 - (b) A bus more than eighty inches [20.32 decimeters] in width and designed to carry more than ~~ten~~ thirteen persons and used for carrying passengers.
 - (c) A two-axle or tandem-axle vehicle or combination of vehicles when towing a trailer when the trailer being towed has a gross weight in excess of six thousand pounds [2721.55 kilograms].
 - (d) Vehicles under class 4.

An operator with a class 3 license may operate a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds [2721.55 kilograms], and a truck towing a trailer, semitrailer, or farm trailer when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed twenty-four thousand pounds [10886.22 kilograms].

- (4) Class 4. Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding motorized bicycles, tractors, and vehicles on which the operator or passengers, or both, ride within an enclosed cab.
- c. The holder of a class 1, 2, or 3 license may receive a class 4 endorsement upon successful completion of an examination.
 - d. An applicant sixteen years of age and older, who does not hold a current valid operator's license may be issued a class 4 learner's permit after successful completion of a written examination. The class 4 license will be issued after the applicant has successfully completed a driver's examination.
 - e. Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen shall hold an initial learner's permit for at least two months before

applying for a class 4 operator's license, shall have completed an approved motorcycle safety course, and shall hold a valid motorcycle learner's permit at the time of application. Any person under sixteen years of age who holds a permit or license is restricted to the operation of a motorcycle powered with an engine of two hundred cubic centimeters, or less, displacement. Evidence that the applicant has met one of the following standards shall accompany the application for a class 4 license:

- (1) Satisfactory completion of a motorcycle course which included at least six hours of classroom instruction and six hours of actual motorcycle operation.
- (2) Successful completion of a motorcycle course at an approved commercial driver training school which included at least six hours of classroom instruction and six hours of actual motorcycle operation.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 14, 1985

CHAPTER 427

SENATE BILL NO. 2405
(Senators Todd, Satrom)
(Representatives Richard, Gates)

MOTORCYCLE OPERATION UNDER AGE 16

AN ACT to amend and reenact subdivision e of subsection 3 of section 39-06-14 of the North Dakota Century Code, relating to operation of motorcycles by persons less than sixteen years old.

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

* SECTION 1. AMENDMENT. Subdivision e of subsection 3 of section 39-06-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen shall hold an initial learner's permit for at least two months before applying for a class 4 operator's license, shall have completed an approved motorcycle safety course, and shall hold a valid motorcycle learner's permit at the time of application. Any person under sixteen years of age who holds a permit or license is restricted to the operation of a motorcycle powered with an engine of two hundred fifty cubic centimeters, or less, displacement. Evidence that the applicant has met one of the following standards shall satisfactorily completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation must accompany the application for a class 4 license-

(1) Satisfactory completion of a motorcycle course which included at least six hours of classroom instruction and six hours of actual motorcycle operation-

* NOTE: Section 39-06-14 was also amended by section 1 of House Bill No. 1227, chapter 426.

(2) Successful completion of a motorcycle course at an approved commercial driver training school which included at least six hours of classroom instruction and six hours of actual motorcycle operation.

Approved April 4, 1985

CHAPTER 428

HOUSE BILL NO. 1139
(Committee on Transportation)
(At the request of the Highway Department)

MOTOR VEHICLE OPERATOR'S LICENSE RENEWALS

AN ACT to amend and reenact section 39-06-19 of the North Dakota Century Code, relating to the renewal of a motor vehicle operator's license; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 39-06-19 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-19. Expiration of license - Renewal. Every operator's license issued under this chapter shall expire and be renewed according to this section. The expiration date of operator's license for every person whose year of birth occurred in a year ending in an odd numeral shall be twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of operator's license for every person whose year of birth occurred in a year ending in an even numeral shall be twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. Application with fee for renewal of license shall be presented to the commissioner not prior to ~~ninety~~ ninety days ten months before the expiration date of the operator's license. The commissioner may require an examination of an applicant as upon an original application. Every application for renewal of a license by an applicant shall be accompanied by a certificate of examination from either the driver licensing or examining authorities or a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of the applicant. The commissioner shall provide visual examination equipment at each location where a license may be renewed. An application for a motor vehicle operator's license from an applicant applying for first license under the age of twenty-one may be accompanied by a certificate of examination from a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of the applicant, in lieu of the eye examination conducted by the driver licensing authorities. No certificate of

examination shall be dated more than six months prior to the date of the driver license application. Every person submitting application and fee for renewal of license one year or more after expiration of license, except an applicant whose military, or merchant marine service has terminated less than sixty days prior to such application, shall be treated as a new driver and subject to the examination as upon an original application. The fee for every operator's license shall be eight dollars.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved February 21, 1985

CHAPTER 429

SENATE BILL NO. 2373
(Senator Wright)
(Representatives Kelly, Moore)

DUI ADMINISTRATIVE AND CRIMINAL PROVISIONS

AN ACT to create and enact a new subsection to section 39-06-32 of the North Dakota Century Code, relating to sanctions for administrative motor vehicle operator's license sanctions of other states; and to amend and reenact sections 39-06-35, 39-06-36, 39-06-42, subdivision b of subsection 3 and subsection 3.1 of section 39-06.1-10, subsection 2 of section 39-06.1-11, subsection 3 of section 39-06.1-13, subsection 5 of section 39-08-01, sections 39-16.1-01, 39-16.1-07, 39-20-01, 39-20-02, 39-20-03.1, 39-20-03.2, 39-20-04, 39-20-04.1, 39-20-05, 39-20-06, 39-20-07, 39-20-13, 39-20-14, and 40-18-12 of the North Dakota Century Code, relating to law enforcement, judicial, and administrative procedures, sanctions, and penalties for driving or being in actual physical control of a motor vehicle while under the influence of alcohol or a controlled substance.

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

SECTION 1. A new subsection to section 39-06-32 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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 a blood 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.

SECTION 2. AMENDMENT. Section 39-06-35 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-35. Period of suspension.

- 1- The commissioner may not suspend an operator's license or privilege to drive a motor vehicle for a period of more than one year, except as permitted or required under this section, section 39-06-17, section 39-06-43, or subsection 3.1 of section 39-06-1-10.
- 2- When the period of suspension imposed under this title ceases, the operator's license or driving privilege that has been suspended may not be returned or reinstated, and remains under suspension, until the operator pays to the commissioner a reinstatement fee of twenty-five dollars, or fifty dollars if the suspension was the result of a violation under section 39-08-01 or chapter 39-20, and, if applicable, until the provisions of subsection 3.1 of section 39-06.1-10 have been complied with. Upon payment of the reinstatement fee the license must be returned to the operator. A reinstatement fee is not required for a license to be returned to the operator if the return of the license is due to the findings of a hearing, reexamination of hearing, or court or judicial review under chapter 39-06, 39-06.1, or 39-20.

SECTION 3. AMENDMENT. Section 39-06-36 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-36. Restoration of revoked licenses. Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the revocation period such person may make application for a new license as provided by law, but the commissioner shall not then issue a new license unless and until he is satisfied after investigation of the individual's driving records, driving habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. A person whose license or privilege to drive a motor vehicle has been revoked must pay to the commissioner a revocation reinstatement fee of twenty-five dollars, or fifty dollars if the revocation was imposed for violation of subsection 5 of section 39-06-17, section 39-06-31, section 39-06-43, or section 39-20-04, in addition to any license renewal fee, for issuance of a new license. Until the reinstatement fee is paid the license and privilege to drive a motor vehicle remain under revocation. A reinstatement fee is not required if a revoked license is reinstated due to the findings of a hearing, reexamination of hearing, or court or judicial review as provided under chapter 39-06, 39-06.1, or 39-20.

SECTION 4. AMENDMENT. Section 39-06-42 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-42. Penalty for driving while license suspended or revoked - Impoundment of vehicle number plates - Authority of cities.

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 is guilty of a class B misdemeanor.
2. If the suspension or revocation was imposed for violation of section 39-08-01 or equivalent ordinance or was governed by section 39-06-31 or chapter 39-20, the sentence must be at least ~~fifteen~~ four consecutive days' imprisonment and such fine as the court deems proper. The sentence and the imposition of sentence may not be suspended under chapter 12-53. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.
3. In addition to any other punishment imposed, the court may order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff for the duration of the period of suspension or revocation. When a period of suspension has been extended under subsection 5 of section 39-06-17, the court may order the number plates to be impounded in accordance with this subsection. The impounded number plates may be released, upon order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title to the motor vehicle issued by the registrar of motor vehicles.
4. A city may, by ordinance, authorize its municipal judge to order impoundment of motor vehicle number plates in the manner provided in subsection 3.

SECTION 5. AMENDMENT. Subdivision b of subsection 3 and subsection 3.1 of section 39-06.1-10 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- | | |
|---|------------------|
| b. Criminal Violations | |
| Conviction of: | Points Assigned: |
| (1) Reckless driving, in violation of section 39-08-03, or equivalent ordinance | 8 points |
| (2) Aggravated reckless driving, in violation of section 39-08-03, or | 12 points |

- equivalent ordinance
- (3) Leaving the scene of an accident involving property damage in violation of section 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances 14 points
- (4) Leaving the scene of an accident involving personal injury or death in violation of section 39-08-04, or equivalent ordinance 18 points
- (5) Driving or being in actual physical control of a motor vehicle in violation of section 39-08-01, or equivalent ordinance, if the driving record shows that the licensee has not within the five years preceding the violation previously violated section 39-08-01, or equivalent ordinance 24 points
- (6) Driving or being in actual physical control of a motor vehicle in violation of section 39-08-01, or equivalent ordinance, if the driving record shows that the licensee has within the five years preceding the violation previously violated section 39-08-01, or equivalent ordinance 63 points
- (7) Driving or being in actual physical control of a motor vehicle in violation of section 39-08-01, or equivalent ordinance, if the driving record shows that the licensee has within the five years preceding the violation at least twice 115 points

previously violated section 39-08-01 or equivalent ordinance

(8) Violating restrictions in a restricted license issued under section 39-06-17 and relating to the use of eyeglasses or contact lenses while driving 3 points

(8) (9) Violating any restrictions other than those listed in paragraph 7 8 of this subdivision, contained in a restricted license issued under section 39-06-17 or section 39-06.1-11 4 points

3.1. a. If the commissioner is informed by a court that under section 39-08-01 or 40-18-12 a person has been convicted of violating section 39-08-01 or equivalent ordinance has been referred for addiction evaluation to an appropriate licensed addiction treatment program and has been subsequently evaluated as needing addiction treatment, the commissioner shall, within three days of being so informed, subject to the offender's opportunity for hearing under subsection 1, may not restore the operator's license to the offender until the offender furnishes to the commissioner the written statement of the counselor or instructor of an appropriate licensed addiction treatment program that the offender does not require a treatment program or that the offender has physically attended the prescribed treatment program and has complied with the attendance rules. The commissioner shall send notice to the offender informing the offender of the addiction evaluation and of the provisions of this subsection.

b. If the offender does not, within thirty days from the date the commissioner mailed the notice, enroll in an appropriate licensed addiction treatment program, with that enrollment verified by the program's addiction counselor or instructor, or, if enrolled, the offender does not complete the treatment program, the commissioner shall, subject to the offender's opportunity for hearing under subsection 1, suspend that person's driving privileges in accordance with subdivisions c and d:

c. If the driving record shows that: The suspension must be at least:

- (1) Within the five years preceding the most recent violation of section 39-08-01, or equivalent ordinance, the offender has not previously violated section 39-08-01 or equivalent ordinance 180 days
- (2) Within the five years preceding the most recent violation of section 39-08-01, or equivalent ordinance, the offender has once previously violated section 39-08-01 or equivalent ordinance 1 year
- (3) Within the five years preceding the most recent violation of section 39-08-01, or equivalent ordinance, the offender has twice previously violated section 39-08-01 or equivalent ordinance 2 years

- d- If within the seven years preceding the most recent violation of section 39-08-01, or equivalent ordinance, the offender has previously violated section 39-08-01 or equivalent ordinance at least three times, the commissioner may restore driving privileges to the offender only after that person has completed addiction treatment through an appropriate licensed addiction treatment program and has had no alcohol or drug-related offense for two consecutive years after completion of treatment.
- e- A period of license suspension imposed on an offender under this subsection is in addition and consecutive to any period of license suspension or revocation imposed under section 39-06-31 or chapter 39-20 or after a conviction of violating section 39-08-01 or equivalent ordinance.

SECTION 6. AMENDMENT. Subsection 2 of section 39-06.1-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 upon a second or subsequent offense within the time limitations under section 39-08-01 or chapter 39-20. 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 section 1 of this Act 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 7. AMENDMENT. Subsection 3 of section 39-06.1-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The point total shown on a licensee's driving record shall be reduced by seven points for successful completion of an inpatient or outpatient alcoholism or narcotics treatment program approved by the state department of health human services. No reduction of points shall be made under this subsection, unless the licensee's driving record included, at the time of suspension, points assigned for violation of section 39-08-01, or an equivalent ordinance. The provisions of this subsection shall not have application prior to the termination of the suspension period imposed on the driver.

SECTION 8. AMENDMENT. Subsection 5 of section 39-08-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and referral an order for addiction evaluation to by an appropriate licensed addiction treatment program. if the addiction evaluation indicates treatment is needed, the court shall notify the commissioner.

- b. For a second offense within five years, the sentence must include at least four days' imprisonment of which forty-eight hours must be served consecutively, or ten days' community service; a fine of at least five hundred dollars; and referral an order for addiction evaluation ~~to~~ by an appropriate licensed addiction treatment program. If the addiction evaluation indicates treatment is needed, the court shall notify the commissioner.
- c. For a third offense within five years, the sentence must include at least sixty days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand dollars, and referral an order for addiction evaluation ~~to~~ by an appropriate licensed addiction treatment program. If the addiction evaluation indicates treatment is needed, the court shall notify the commissioner.
- d. For a fourth offense within seven years, the sentence must include one hundred eighty days' imprisonment, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
- e. A sentence or imposition of sentence under this section may not be suspended under chapter 12-53 except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
- (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
 - (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service, which sentence or imposition of sentence may not be suspended under chapter 12-53.
- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section shall be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
- g. If the penalty mandated by this section includes imprisonment upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs

treatment, the court may order the defendant to undergo inpatient treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the inpatient treatment must be credited as a portion of a sentence of imprisonment under this section.

* SECTION 9. AMENDMENT. Section 39-16.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-01. Application. The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply with respect to ~~persons~~ any person who have has been convicted of or forfeited bail for certain offenses under motor vehicle laws, whose operator's license has been revoked or suspended or issuance has been denied as an administrative sanction under chapter 39-20, or who have has failed to pay judgments upon causes of action arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of this state.

SECTION 10. AMENDMENT. Section 39-16.1-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-07. Revocation or suspension of license for reasons other than provisions of this chapter.

1. Whenever the commissioner under any other law of this state, except subsections 1 through 5 of section 39-06-40 and section 39-06-40.1, revokes the license of any person the license shall remain revoked and shall not ~~at any time thereafter~~ be renewed nor shall any license be ~~thereafter~~ issued to such person, unless and until he shall give the person gives and thereafter maintain maintains proof of financial responsibility.
2. If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for ~~any~~ offense requiring the revocation of license, driving or being in actual physical control of a vehicle while under the influence in violation of section 39-08-01 or equivalent ordinance, or operating a motor vehicle upon the highway while his the person's license or privilege to drive is under suspension, revocation, or cancellation, the license or driving privilege shall remain suspended, revoked, or canceled and shall not ~~at any time thereafter~~ be renewed, nor shall any license be ~~thereafter~~ issued or returned to the person, unless and until he shall give the person gives and thereafter maintain maintains proof of financial responsibility.

* NOTE: Section 39-16.1-01 was also amended by section 101 of Senate Bill No. 2086, chapter 82.

3. If a person's operator's license has been revoked or suspended or issuance has been denied as an administrative sanction under chapter 39-20, the person's operator's license may not be renewed, nor may any license be issued or returned to the person, unless the person gives and maintains proof of financial responsibility.
4. Whenever the commissioner revokes or suspends a nonresident's operating privilege by reason of an administrative sanction under chapter 39-20, a conviction, or forfeiture of bail, the privilege shall remain so remains revoked or suspended unless the person shall have previously given or shall immediately give gives and thereafter maintain maintains proof of financial responsibility.

SECTION 11. AMENDMENT. Section 39-20-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-01. Implied consent to determine alcoholic and drug content of blood. Any person who operates 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, 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 this chapter the word "drug" means a "controlled substance" as defined in section 19-03.1-01, and the words "chemical test" or "chemical analysis" mean any test to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-20-03, under arrest and informing that person that the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. The arresting officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for one year up to three years of the person's driving privileges. The arresting officer shall determine which of the tests is to be used.

SECTION 12. AMENDMENT. Section 39-20-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-02. Persons qualified to administer test and opportunity for additional test. Only a physician, or a qualified technician, chemist, or registered nurse acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content therein. This

limitation does not apply to the taking of breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the person charged. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests 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 law enforcement officer shall be made available to him that person by the law enforcement agency which administered the test or tests.

SECTION 13. AMENDMENT. Section 39-20-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-03.1. Action following test result or on refusing test for a resident operator. If a person refused to submit to a test as provided under section 39-20-01 or 39-20-14, or if a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have a blood alcohol 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 the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the department's commissioner's official notification to the person of the department's commissioner's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the 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 a blood alcohol concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subdivision 1 during that person's

reappearance within the officer's jurisdiction or notify the sheriff in the county of this state a law enforcement agency having jurisdiction where the person lives. On that notification, that sheriff law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit and, within twenty-four hours, relay forward the license and a copy of the temporary operator's permit to the arresting officer. The sheriff law enforcement agency shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the department's commissioner's official notification to the person of the department's commissioner's intent to revoke, suspend, or deny driving privileges in this state.

3. The law enforcement arresting officer, within five days of issuing the issuance of the temporary operator's permit, shall forward to the commissioner a sworn report and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test or tests under section 39-20-01 or section 39-20-14, the sworn report shall include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the sworn report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested in accordance with section 39-20-01, 39-20-02, or 39-20-03 for blood alcohol concentration under this chapter, and that the test results of the test show that the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight. In addition to the operator's license and sworn report, the 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 officer.

SECTION 14. AMENDMENT. Section 39-20-03.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-03.2. Action following test result or on refusing test by a nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02,

or 39-20-03 and the test results show the person to have a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit shall be signed and dated by the officer and serves as the department's commissioner's official notification to the person of the department's commissioner's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.
2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the blood alcohol concentration analysis showing the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight, shall mail the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty days from the date of mailing or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit shall be signed and dated by the officer.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the commissioner a sworn report and 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 officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the sworn report shall include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the sworn report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested in accordance with

section 39-20-01, 39-20-02, or 39-20-03 for blood alcohol concentration under this chapter, and that the results of the test show that the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight.

SECTION 15. AMENDMENT. Section 39-20-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none shall be given, but the law enforcement officer shall immediately take possession of the person's operator's license and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the commissioner's official notification to the person of the commissioner's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The commissioner, upon the receipt of that person's operator's license, if taken under ~~section 39-20-03-1 or 39-20-03-2,~~ and a sworn report of the law enforcement officer, forwarded by the officer within five days after the refusal issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for ~~one year~~ the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the commissioner shall deny to the person the issuance of a license or permit for ~~one year~~ 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 this chapter. In the revocation of the person's operator's license the commissioner shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the commissioner may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under ~~sections 39-20-03-1 and this section~~ or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

1. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
2. Two years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
3. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 16. AMENDMENT. Section 39-20-04.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-04.1. Administrative penalty sanction for driving or being in physical control of a vehicle while having certain blood alcohol concentration.

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the sworn report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having a blood alcohol 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 driving or being in physical control of a motor vehicle, the commissioner shall suspend the person's operator's license as follows:
 - a. For ninety ninety-one days if the person was arrested for driving or being in actual physical control of a motor vehicle in violation of section 39-08-01 or equivalent ordinance and the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the

person's operator's license has not previously been suspended or revoked under this section chapter.

- b. For one year three hundred sixty-four days if the person was arrested for driving or being in actual physical control of a motor vehicle in violation of section 39-08-01 or equivalent ordinance and the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this section chapter.
- c. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, 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 operator's license the commissioner shall give credit for the time the person was without an operator's license after the day of the offense, except that the commissioner may not give credit for the time the person retained driving privileges through a temporary operator's permit issued under section 39-20-03.17 or 39-20-03.27 ~~or 39-20-06~~.

SECTION 17. AMENDMENT. Section 39-20-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-05. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or ~~section~~ 39-20-04.1, the commissioner shall give the person a written notice of intention to revoke, suspend, or deny and afford that person an opportunity for a hearing if the person mails a request for the hearing to the commissioner within five days after the date of issuance of the temporary operator's permit. The hearing must be held within twenty days after the date of issuance of the temporary operator's permit, but the hearing officer may extend the hearing to within thirty days after the issuance of the temporary operator's permit if good cause is shown. If the hearing date is extended beyond twenty days from the issuance of the temporary operator's permit, the commissioner 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 the expiration of the temporary operator's permit serves as the commissioner's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having a blood alcohol 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 officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance; whether the person was placed under arrest; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether, based on a review of the test procedures and results, show the person had a blood alcohol 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 blood alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, 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 and its. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance; whether the person was placed under arrest if applicable; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether

the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests 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 this chapter, 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 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 blood alcohol 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 driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person was operating a motor vehicle with had a blood alcohol concentration of at least ten one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under section 39-20-03-1 or 39-20-03-2 this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the commissioner within ten days of the conclusion of the hearing. Within two days from the date in which the commissioner receives the report, the commissioner shall mail a notice of the decision to the person who requested the hearing and, if the decision of the hearing officer is to not suspend or not revoke the person's operator's license, shall return the license to the person. If the hearing officer has determined in favor of the person, the commissioner shall return the person's operator's license. Notice of the

decision and resulting order of the commissioner is sufficient if mailed by regular mail to the address on file with the commissioner under section 39-06-20.

- 5- 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 commissioner's hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, 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 under section 39-06-20, 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 driving 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 39-20-06.

SECTION 18. AMENDMENT. Section 39-20-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-06. Judicial review. Any person aggrieved whose operator's license or privilege has been suspended, revoked, or denied by the decision of the commissioner or a hearing officer under section 39-20-05 may, appeal within seven days after the commissioner mailed the notice date of the decision hearing under section 39-20-05 as shown by the date of the hearing officer's decision, section 28-32-15 notwithstanding, serve by serving on the commissioner and file filing a notice of appeal and specifications of error in the district court in the county where the alleged events occurred for which the demand for a 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. The Neither the commissioner or nor the court may not thereupon 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. It is the record on which appeal shall 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 19. AMENDMENT. Section 39-20-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-07. Interpretation of chemical tests. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle 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, a blood alcohol concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight of alcohol in the person's blood 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.
3. A person having a blood alcohol 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 driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.
4. Percent by weight of alcohol in the blood or blood 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 breath air or grams of alcohol per sixty-seven cubic centimeters of urine.
5. The results of the chemical analysis 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 techniques, devices, and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who 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, and ~~techniques~~ 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 highway commissioner and the clerk of the district court in each county and shall include in the record:
 - a. A ~~quarterly~~ annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. A ~~quarterly~~ annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational check list and forms prescribing the methods and ~~techniques~~ 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 analysis ~~signed~~ issued by the office of the state toxicologist must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter.
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 analysis 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 20. AMENDMENT. Section 39-20-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-13. State toxicologist to examine blood specimens of fatalities in accidental deaths involving a motor vehicle. In cases of death occurring on or after July 1, 1969, resulting from a motor vehicle accident or other unnatural death occurring in a motor vehicle, the county coroner shall require that a ~~blood specimen specimens~~ of at least ~~twenty cubic centimeters~~ blood, urine, and vitreous humor be withdrawn from the body of the decedent within twenty-four hours after his death by a coroner, coroner's physician, or other qualified person, prior to embalming. The ~~blood~~ specimens shall be collected and preserved by methods and techniques established by the state toxicologist. The ~~blood specimens~~ so drawn shall be sent to the state toxicologist for analysis for alcohol, carbon monoxide, and other drug content. The state toxicologist shall keep a record of all such examinations to be used for statistical purposes. The results of the examinations referred to in this section shall be used only for statistical purposes, except that the results shall be released upon the issuance of a subpoena duces tecum by a court of competent jurisdiction in any civil or criminal action. The cumulative results of the examinations, without identifying the individuals involved, shall be disseminated to interested state and local officials and made public by the state toxicologist. Any person drawing ~~blood the specimens~~ and any person making any examination ~~of blood~~ under the terms of this section shall be immune from all liability, civil or criminal, that might otherwise be incurred or imposed. The individual drawing the ~~blood sample specimens~~ shall be paid a fee of five dollars by the state toxicologist for each acceptable ~~blood~~ specimen submitted for analysis under the requirements of this section.

SECTION 21. AMENDMENT. Section 39-20-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the person's breath for the purpose of estimating the alcohol content of the person's blood upon the request of a law enforcement officer who has reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol. A person may not be required to submit to a screening test or tests 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 or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests shall be performed by an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by

* NOTE: Section 39-20-13 was also amended by section 1 of House Bill No. 1140, chapter 443.

the state toxicologist. The results of such screening test shall be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for one year up to three years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none shall be given, but such refusal shall be sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 shall be available. No provisions of this section shall supersede any provisions of chapter 39-20, nor shall any provision of chapter 39-20 be construed to 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 in a person's blood, breath, saliva, or urine.

SECTION 22. AMENDMENT. Section 40-18-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-12. Commitment for violation of city ordinance - Limitation - Labor in lieu of fine - Diagnosis and treatment of persons convicted while driving under the influence. If the defendant is found guilty of the violation of a municipal ordinance and is committed as provided in section 40-11-12, the governing body may provide by ordinance that the defendant work for the municipality city at such labor as the defendant's strength and health permit, not exceeding eight hours in each working day. For that work, the person so imprisoned must be allowed for each day, exclusive of board, ten dollars on account of the fines and costs assessed. If a person is convicted under an ordinance prohibiting driving or being in physical control of a vehicle while under the influence of an intoxicating liquor or a narcotic drug, the court shall refer order the person to an appropriate licensed addiction treatment program for addiction evaluation and, if the evaluation indicates that treatment is needed, report to the state highway commissioner in accordance with section 39-08-01.

Approved April 15, 1985

CHAPTER 430

HOUSE BILL NO. 1287
(Thompson, Nalewaja)

DRIVING WITHOUT LIABILITY INSURANCE

AN ACT to create and enact a new subsection to section 39-06.1-05 and a new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to traffic violations excluded from treatment as noncriminal and to points assigned against an operator's license; to amend and reenact section 39-08-20 of the North Dakota Century Code, to provide a penalty for driving without liability insurance; and to repeal subsection 6 of section 39-06.1-06 and paragraph 25 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to noncriminal disposition of the offense of driving without liability insurance.

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

SECTION 1. A new subsection to section 39-06.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Driving without liability insurance in violation of
section 39-08-20.

SECTION 2. A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Operating a motor vehicle 6 points
without liability insurance,
in violation of
section 39-08-20

SECTION 3. AMENDMENT. Section 39-08-20 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-20. Driving without liability insurance prohibited - Penalty. No
A person shall may not drive 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 such that motor vehicle in the amount required by chapter 39-16.1. Violation of this section is a class B misdemeanor.

SECTION 4. REPEAL. Subsection 6 of section 39-06.1-06 and paragraph 25 of subdivision a of subsection 3 of section 39-06.1-10 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 31, 1985

CHAPTER 431

HOUSE BILL NO. 1271
(Conmy, Winkelman)

MOTOR VEHICLE EQUIPMENT AND MODIFICATIONS

AN ACT to create and enact a new subsection to section 39-06.1-05 of the North Dakota Century Code, relating to offenses excluded from the noncriminal disposition procedure for certain traffic offenses; to amend and reenact section 39-21-45.1 and subsection 1 of section 39-21-46 of the North Dakota Century Code, relating to motor vehicle equipment and modifications to motor vehicles; and to declare an emergency.

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

SECTION 1. A new subsection to section 39-06.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

Operating a modified motor vehicle in violation of section 39-21-45.1.

SECTION 2. AMENDMENT. Section 39-21-45.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-45.1. Modification of motor vehicle. It shall be unlawful for any Except as otherwise provided in this section, a person to may not operate upon a public highway a motor vehicle of a type required to be registered under the laws of this state with an unloaded a weight of six seven thousand pounds [2721.55 3175.14 kilograms] or less with alterations or changes from the manufacturer's original design, except that nothing contained herein shall prevent a person from operating a motor vehicle on a public highway with normal wear provided that the normal wear shall not affect the control of the vehicle. The registrar shall promulgate rules and requirements which, so far as possible, shall conform to the regulations established by the vehicle equipment safety commission and the federal motor vehicle safety standards of the suspension, steering, or braking system of the motor vehicle. The weight must be computed on the basis of the unmodified and unloaded weight of the motor vehicle, and without regard to any ballast that may be placed in the

vehicle. As to bumpers, motor vehicle height, and permitted modifications, the following requirements also apply:

1. The motor vehicle must be equipped with front and rear bumpers.
2. The maximum body height permitted for the motor vehicle is forty-two inches [106.68 centimeters]. Measurement of body height is made from a level ground surface to the floor of the cargo area.
3. The maximum bumper height permitted is twenty-seven inches [68.58 centimeters]. Measurement of bumper height is made from a level ground surface to the highest point on the bottom of the bumper.
4. The vehicle may be modified in accordance with the following:
 - a. Any modifying equipment must meet specialty equipment marketing association standards.
 - b. If tires placed on a motor vehicle have a diameter greater than that of the tires on the motor vehicle as manufactured, those tires must comply with department of transportation requirements.
 - c. The maximum outside diameter permitted for tires is forty-four inches [111.76 centimeters].
 - d. A horizontal drop bumper may be used to comply with the bumper height requirement of subsection 3. The horizontal bumper must:
 - (1) Be at least three inches [7.62 centimeters] in vertical width;
 - (2) Extend the entire horizontal body width; and
 - (3) Be horizontal, load bearing, and attached to the vehicle frame to effectively transfer impact when engaged.
 - e. The maximum lift permitted in the suspension system is four inches [10.16 centimeters].
5. A person charged with violating this section has the burden of proceeding to show that the modifications are permitted under this section.
6. Vehicles owned by law enforcement agencies, the military, fire fighting agencies, and ambulances, may be modified without regard to this section.

7. The registrar may adopt rules to implement this section.

SECTION 3. AMENDMENT. Subsection 1 of section 39-21-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which ~~he~~ the actor knows to be in such unsafe condition as to endanger any person, or which ~~he~~ the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which ~~he~~ the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter. Any person who violates any of the provisions of sections 39-21-08, 39-21-09, 39-21-10, or 39-21-14 shall be assessed a fee of ten dollars. Any person who, in violation of ~~the provisions of~~ this chapter, drives, or any owner who causes or knowingly permits to be driven upon a highway, any vehicle or combination of vehicles which ~~he that person~~ knows is unsafe or improperly equipped ~~shall be~~ is guilty of an infraction.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 27, 1985

CHAPTER 432

HOUSE BILL NO. 1425
(Representatives Whalen, Wald)
(Senator Maixner)

SPEEDING PENALTIES

AN ACT to create and enact a new subsection to section 39-06.1-06 and a new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to penalties for violation of highway speed limits; to amend and reenact subsection 3 of section 39-06.1-06, paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10, and subdivision f of subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to highway speed limits and penalties for violating highway speed limits; and to provide a contingent effective date.

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

SECTION 1. AMENDMENT. Subsection 3 of section 39-06.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. For Except as provided in section 2 of this Act, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - 5	\$ 5
6 - 10	\$ 5 plus \$1/each mph 5 mph over limit
11 - 15	\$ 10 plus \$1/each mph 10 mph over limit
16 - 20	\$ 15 plus \$2/each mph 15 mph over limit
21 - 25	\$ 25 plus \$3/each mph 20 mph over limit
26 - 35	\$ 40 plus \$3/each mph 25 mph over limit
36 - 45	\$ 70 plus \$3/each mph 35 mph over limit
46 +	\$100 plus \$5/each mph 45 mph over limit

SECTION 2. A new subsection to section 39-06.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

On a highway on which the speed limit is

sixty-five miles per hour, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

<u>Speed</u>	<u>Fee</u>
66 - 70	\$ 10 plus \$1/each mph over 65
71 - 75	\$ 15 plus \$2/each mph over 70
76 - 80	\$ 25 plus \$3/each mph over 75
81 - 90	\$ 40 plus \$3/each mph over 80
91 - 100	\$ 70 plus \$3/each mph over 90
101 +	\$100 plus \$5/each mph over 100

* SECTION 3. AMENDMENT. Paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- (33) Operating Except as provided in section 4 of this Act, operating a motor vehicle in excess of 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 |

SECTION 4. A new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

On a highway on which the speed limit is sixty-five miles per hour, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance

<u>Speed (mph)</u>	<u>Points</u>
71 - 75	1
76 - 80	4
81 - 90	7
91 - 100	10
101 +	12

SECTION 5. AMENDMENT. Subdivision f of subsection 1 of section 39-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- f. ~~Fifty-five~~ Sixty-five miles [~~88.51~~ 104.61 kilometers] an hour under other circumstances, unless otherwise permitted, restricted, or required by conditions.

* NOTE: Section 39-06.1-10 was also amended by section 1 of House Bill No. 1480, chapter 434.

SECTION 6. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the governor certifies to the secretary of state and to the highway commissioner that the federal restrictions on speed limits exceeding fifty-five miles per hour are no longer in effect, but only if that day is before July 1, 1987.

Approved March 28, 1985

CHAPTER 433

SENATE BILL NO. 2236
(Committee on Transportation)
(At the request of the Highway Patrol)

MOVING VIOLATION

AN ACT to amend and reenact section 39-06.1-09 of the North Dakota Century Code, relating to the definition of a moving violation.

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

SECTION 1. AMENDMENT. Section 39-06.1-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-09. "Moving violation" defined. For the purposes of section 39-06.1-06 and section 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; sections 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-08-09; 39-08-18; 39-09-04.1; 39-09-09; 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapters 39-10, 39-10.2, or 39-21, or equivalent ordinances, except ~~section~~ sections 39-21-01, 39-21-44, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

Approved March 22, 1985

CHAPTER 434

HOUSE BILL NO. 1480
(A. Olson, V. Olson, D. Olsen)

SPEEDING VIOLATION POINT ASSESSMENT

AN ACT to create and enact a new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to assessment of points for certain speeding violations; and to amend and reenact paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to assessment of points for speeding violations.

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

* SECTION 1. AMENDMENT. Paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

(33) Operating Except as provided in section 2 of this Act, operating a motor vehicle in excess of 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

SECTION 2. A new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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

<u>6 - 10 mph over limit</u>	<u>1 point</u>
------------------------------	----------------

* NOTE: Section 39-06.1-10 was also amended by section 3 of House Bill No. 1425, chapter 432.

<u>11 - 15 mph over limit</u>	<u>2 points</u>
<u>16 - 20 mph over limit</u>	<u>3 points</u>
<u>21 - 25 mph over limit</u>	<u>4 points</u>
<u>26 - 35 mph over limit</u>	<u>6 points</u>
<u>36 - 45 mph over limit</u>	<u>8 points</u>
<u>46 + mph over limit</u>	<u>12 points</u>

Approved March 28, 1985

CHAPTER 435

HOUSE BILL NO. 1331
(Representatives Thompson, Wald, Whalen)

ACCIDENT REPORTS

AN ACT to amend and reenact section 39-08-09, subsection 6 of section 39-08-13, and section 39-16-05 of the North Dakota Century Code, relating to accidents involving motor vehicles for which a report to law enforcement agencies is required.

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

SECTION 1. AMENDMENT. Section 39-08-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-09. Immediate notice of accident. The driver of a vehicle involved in an accident resulting in injury to or death of any person, or property damage to an apparent extent of ~~four hundred at least six hundred dollars or more~~, shall immediately give notice of ~~such the~~ accident to the local police department if ~~such the~~ accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five days of the accident the driver shall supply that information to the driver's license division in the form the division requires.

The commissioner may suspend the license or permit to drive and any nonresident operating privileges of any person failing to comply with the duties as provided in sections 39-08-06 through 39-08-09 until ~~such those~~ duties have been fulfilled, and the commissioner may extend ~~such the~~ suspension not to exceed thirty days.

SECTION 2. AMENDMENT. Subsection 6 of section 39-08-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Upon request of any person and upon payment of a fee of two dollars, the commissioner may furnish to a requestor a copy of that portion of an investigating officer's accident report which does not disclose the opinion of the reporting officer, if the report shows that death, personal injury, or property damage of four hundred dollars or more resulted from the accident is one for which a driver is required to file a report under section 39-08-09.

* SECTION 3. AMENDMENT. Section 39-16-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-05. Suspension of license and when not applicable.

1. The commissioner, within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of four hundred dollars for which a driver is required to file a report under section 39-08-09, shall suspend the license of each driver of each vehicle in any manner involved in such the accident, and if such. If the driver is a nonresident, the commissioner shall suspend the driver's privilege of operating a motor vehicle within this state unless such driver shall deposit security as provided in sections 39-16-09 and 39-16-10 in a sum which shall be sufficient in the judgment of the commissioner to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against such driver, provided that notice. Notice of such suspension and opportunity for hearing shall be sent by the commissioner to such driver not less than ten days prior to the effective date of such suspension and shall state the amount required as security. However, if a driver, either resident or nonresident, involved in such accident purchases a policy of insurance with at least the amount of coverage required by this section, and files proof and satisfies financial responsibility requirements thereof with the commissioner, that driver shall be allowed to retain his the license or privilege until such time as the driver has accepted responsibility for the accident or agreed to a settlement of claims arising from the accident or until a court of this state has determined that the driver was negligent or responsible for the accident in whole or in part. If the driver is found negligent or responsible for the accident, in whole or in part, his license or privilege shall be suspended and shall not be returned until the driver complies with the provisions of this chapter.

* NOTE: Section 39-16-05 was also amended by section 1 of House Bill No. 1369, chapter 442, and amended by section 70 of Senate Bill No. 2079, chapter 317.

2. This section ~~shall~~ does not apply under the conditions stated in section 39-16-06, or:
- 1- a. To a driver, if he is the owner of the motor vehicle involved in the accident and had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident, affording substantially the same coverage as is required for proof of financial responsibility under chapter 39-16.1.
 - 2- b. To a driver, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicle, affording substantially the same coverage as required for proof of financial responsibility under chapter 39-16.1.
 - 3- c. To a driver, if the liability of such driver for damages resulting from such accident is, in the judgment of the commissioner, covered by any other form of liability insurance policy or bond or certificate of self-insurance under section 39-16-32.
3. No such policy or bond shall be effective under this section unless by an insurance carrier or surety company authorized to do business in this state, except that if such motor vehicle was not registered in the state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance carrier or surety company, if not authorized to do business in this state, shall execute a power of attorney authorizing the commissioner to accept service, on its behalf, of notice or process in any action upon such policy or bond arising out of such accident; provided, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident. Upon receipt of notice of such accident, the insurance carrier or surety company which issued such policy or bond shall furnish for filing with the commissioner a written notice that such policy or bond was in effect at the time of such accident, or the department may rely upon the accuracy of the information and the required report of an accident as to the existence of insurance or a bond unless and until the department has reason to believe that the information is erroneous.

Approved March 14, 1985

CHAPTER 436

HOUSE BILL NO. 1101
 (Representatives Nalewaja, R. Berg)
 (Senator Matchie)

HAZARDOUS CONDITIONS ROAD CLOSING

AN ACT to create and enact a new section to chapter 39-10 of the North Dakota Century Code, relating to rules of the road regarding roads closed for public safety because of hazardous conditions; to amend and reenact paragraph 17 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to the penalty for disobeying traffic control devices; and to declare an emergency.

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

SECTION 1. AMENDMENT. Paragraph 17 of subdivision a of subsection 3 of section 39-06.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

(17) Disobeying a <u>an official</u>	2 points
traffic-control <u>signal device</u>	
in violation of section	
39-10-04, 39-10-05,	
or 39-10-07, or	
equivalent ordinances	

SECTION 2. A new section to chapter 39-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Closing road because of hazardous conditions - Posting of official traffic control devices - Entering closed road prohibited. The highway patrol or local law enforcement authorities having jurisdiction over a road may close a road temporarily due to hazardous conditions if that closing is necessary for the protection and safety of the public. If such a closing is made, the authority ordering the closing shall make every reasonable attempt to notify the public and, conditions permitting, post appropriate official traffic control devices to advise motorists of the closing. Each operator of a motor vehicle shall obey the traffic control device.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 14, 1985

CHAPTER 437

HOUSE BILL NO. 1176
(Committee on Transportation)
(At the request of the Highway Department)

TRAFFIC SIGNS

AN ACT to amend and reenact section 39-10-44 of the North Dakota Century Code, relating to traffic signs.

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

SECTION 1. AMENDMENT. Section 39-10-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-10-44. Stop signs and yield signs.

1. Preferential right of way at an intersection may be indicated by stop signs or yield signs as authorized in section 39-07-03.
2. Every stop sign and every yield sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as near as practicable to the nearest line of the intersecting roadway.
3. Every stop sign shall bear the word "STOP" in letters not less than eight inches {20-32 centimeters} in height. Every yield sign shall bear the word "YIELD" in letters not less than six inches {15-24 centimeters} in height. Every stop sign and every yield sign shall at nighttime be rendered luminous by internal illumination, or by a light projected on the face of the sign or by efficient reflecting elements in the face of the sign.
4. Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting

roadway where the driver has a view of approaching traffic on the intersecting roadway.

- 5- 4. The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

Approved February 4, 1985

CHAPTER 438

HOUSE BILL NO. 1396
(R. Anderson)

FLEEING A POLICE OFFICER

AN ACT to amend and reenact section 39-10-71 of the North Dakota Century Code, relating to the penalty for fleeing or attempting to elude a police officer.

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

SECTION 1. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-10-71. Fleeing or attempting to elude a police officer. Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class B A misdemeanor. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle.

Approved March 14, 1985

CHAPTER 439

HOUSE BILL NO. 1451
(Hedstrom)

MOTORCYCLE HEADGEAR FOR MINORS

AN ACT to create and enact a new subsection to section 39-10.2-06 of the North Dakota Century Code, relating to the operation of a motorcycle where a passenger under eighteen years of age is not wearing protective headgear.

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

SECTION 1. A new subsection to section 39-10.2-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

No person shall operate a motorcycle if a person under the age of eighteen years is a passenger upon that motorcycle and is not wearing protective headgear as provided in subsection 1.

Approved March 22, 1985

CHAPTER 440

SENATE BILL NO. 2200
(Committee on Transportation)
(At the request of the Highway Patrol)

MOTOR VEHICLE SIZE AND WEIGHT

AN ACT to create and enact a new subsection to section 39-12-05 of the North Dakota Century Code, relating to a provision for vehicle weight exemptions; to amend and reenact section 39-12-02, subsection 1 of section 39-12-04, and subsections 1 and 2 of section 39-12-05 of the North Dakota Century Code, relating to permits and adoption of rules governing the operation of certain motor vehicles and to the size and weights of vehicles; and to repeal section 39-18-05 of the North Dakota Century Code, relating to the allowable width, length, and height of mobile homes operated in the state of North Dakota.

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

SECTION 1. AMENDMENT. Section 39-12-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees. The ~~commissioner~~, 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 shall be carried in the vehicle to which it refers and shall be opened to inspection by any peace officer. It shall be 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 shall be single trips only. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.

An appropriate charge shall be made for each permit and all funds collected hereunder by the ~~state highway commissioner and~~ highway patrol shall 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. For each permit for the movement of a mobile home or modular unit, the fee is five dollars. Official or publicly owned vehicles shall not be required to pay charges for permits. The director of tax equalization of the county of destination shall be furnished a copy of the permit for the movement of an overdimensional mobile home.

SECTION 2. AMENDMENT. Subsection 1 of section 39-12-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-04. Width, height, and length limitations on vehicles - Exceptions. Vehicles operated on a highway in this state shall not exceed the following width, height, or length limitations:

1. A total outside width, including load thereon, of eight feet, six inches [~~2-44~~ 2.59 meters]. This limitation shall not apply to:
 - a. ~~Vehicles not exceeding one hundred two inches {259-08 centimeters} while operated on these highways designated by the commissioner-~~
 - b- Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
 - e- b. Implements of husbandry being moved by resident farmers, ranchers, or dealers between sunrise and sunset. Furthermore, the limitation shall not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, or dealers on public state, county, or township highway systems other than interstate highway systems.
 - d- c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover; provided, that the commissioner or local authorities may adopt reasonable rules and regulations governing such movements-
 - e- ~~Commercial haystack movers who have a seasonal permit to move haystacks or hay bales, which shall be obtained from the commissioner upon filing proof of liability insurance coverage in an amount of not less than fifty thousand dollars and the payment of a permit fee of fifteen dollars, which shall be in lieu~~

of registration requirements during the period covered by such permit:

- f. Overwidth self-propelled fertilizer spreaders and hay grinders if the owners have seasonal permits with such restrictions as required by the commissioner, which shall be obtained from the commissioner upon filing proof of liability insurance coverage in an amount of not less than fifty thousand dollars and the payment of a permit fee of fifteen dollars.
- 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 permit shall be in lieu of registration requirements for the permit period. No permit shall 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 shall be deposited in the state highway distribution fund.
- e. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.

All vehicles, including their load, exempted from the width limitations provided by this subsection, when operating on a public highway, shall be preceded and followed by a flagman, or shall have mounted a sign or device on a pole or rod of such type and such height as approved by the commissioner, indicating the presence of an overwidth, slow-moving vehicle.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 39-12-05 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle and, on axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms]

per axle. On state highways and subject to the approval of the highway commissioner, from December first to March seventh, the limitations on gross weight provided in this subsection may be exceeded by ten percent. On county highways and subject to the approval of the board of county commissioners, from December first to March seventh, the limitations on gross weights provided in this subsection may be exceeded by ten percent. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.

2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W equals maximum weight in pounds carried on any group of more than one axle; L equals distance in feet between the extremes of any group of consecutive axles; and N equals number of axles in the group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds [15,422.14 kilograms] each, providing the overall distance between the first and last axles of the consecutive sets of tandem axles is at least thirty-six feet [10.97 meters]. On all state highways and unless otherwise posted, the gross weight may not exceed one hundred five thousand five hundred pounds [47,854.00 kilograms]. On the interstate system and on all other highways the gross weight may not exceed eighty thousand pounds [36,287.57 kilograms] except that highways under the jurisdiction of local authorities may be designated by them for gross weights not over one hundred five thousand five hundred pounds [47,854.00 kilograms]. The gross weight limitations do not apply to equipment that the state highway commissioner or patrol and the commissioner's agents commissioner approve for exemption. The exemption may not exceed eighty thousand pounds [36,287.57 kilograms] on the interstate system and one hundred five thousand five hundred pounds [47,854.00 kilograms] on all other highways. For every vehicle approved for exemption the commissioner highway patrol shall issue a nontransferable certificate of exemption valid for one year. The commissioner highway patrol may charge an administrative fee for the certificate.

SECTION 4. A new subsection to section 39-12-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The commissioner, and local authorities, as to the highways under their respective jurisdictions, may issue certificates authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The certificates may not provide for a gross weight in excess of eighty thousand pounds [36,287.57 kilograms] on the interstate system, nor a gross weight in excess of one hundred five thousand five hundred pounds [47,854.00 kilograms] on any other highway. The certificates shall provide only for the movement of agricultural products from the field to the initial storage site, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the certificates and direct how they shall be issued. All certificate fees collected by the highway patrol shall be deposited in the highway distribution fund.

SECTION 5. REPEAL. Section 39-18-05 of the 1983 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 27, 1985

CHAPTER 441

SENATE BILL NO. 2214
(Committee on Transportation)
(At the request of the Highway Patrol)

EXTRAORDINARY ROAD USE

AN ACT to create and enact a new section to chapter 39-12 of the North Dakota Century Code, relating to the voluntary payment of extraordinary road use fees; to amend and reenact sections 39-12-14, 39-12-16, and 39-12-20 of the North Dakota Century Code, relating to the civil procedure applicable to overweight vehicles and the disbursement of extraordinary road use fees.

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

SECTION 1. AMENDMENT. Section 39-12-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-14. Civil complaint. ~~The commissioner with the assistance of the attorney general or the state's attorney~~ of the county where such vehicles are impounded, shall, if no settlement is made under section 4 of this Act, immediately prepare and file a civil complaint on behalf of the authority having jurisdiction of the road whereon the violation occurred, for the purpose of recovering charges for the extraordinary use of the highways, streets, or roads of this state.

SECTION 2. AMENDMENT. Section 39-12-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-16. Cash bond - Holding. Unless a cash bond shall be furnished in an amount sufficient to cover the charges for extraordinary use of highways, streets, and roads, as provided in section 39-12-18, together with the costs, which may be collectable under any subsequent settlement made pursuant to section 4 of this Act, said vehicle shall be held until a trial of the case can be had before the district court.

SECTION 3. AMENDMENT. Section 39-12-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-20. Proceeds of sale. The proceeds of sale shall be applied first to the payment of the costs of the proceedings,

including attorneys and witness fees and costs, and next to the payment of the charges assessed. Such charges shall be remitted to the state treasurer to be credited to the highways construction fund; and the moneys so collected are hereby appropriated for use by the state highway department in the construction or reconstruction of highways, roads, and streets of this state. The balance of the proceeds of any sale after the payment of costs and charges shall be paid over by the sheriff to the person entitled thereto as determined by the court, or shall be deposited with the clerk of court for such payment.

SECTION 4. A new section to chapter 39-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Voluntary settlement of extraordinary road use fee charges. Before the complaint is issued pursuant to section 39-12-14, the owner, his driver or agent, may voluntarily pay the amount of the extraordinary road use fee provided under section 39-12-17, plus any towing or storage costs. Any settlement, whether made by the owner, his driver or agent, shall be presumed to be of a voluntary nature. A peace officer is authorized to receive the settlement payment on behalf of the authority having jurisdiction of the road whereon the violation occurred. The extraordinary road use fees shall be remitted to the state treasurer to be credited to the highway fund.

Approved March 31, 1985

CHAPTER 442

HOUSE BILL NO. 1369
(Wald)

MOTOR VEHICLE INSURANCE REQUIREMENT

AN ACT to amend and reenact sections 39-16-05, 39-16.1-02, subsection 3 of section 39-16.1-05, and subdivision b of subsection 2 of section 39-16.1-11 of the North Dakota Century Code, relating to required level of insurance against liability for damage to property arising from the operation of motor vehicles.

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

*SECTION 1. AMENDMENT. Section 39-16-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-05. Suspension of license and when not applicable. The commissioner, within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of four hundred dollars, shall suspend the license of each driver of each vehicle in any manner involved in such accident, and if such driver is a nonresident, the commissioner shall suspend the driver's privilege of operating a motor vehicle within this state unless such driver shall deposit security as provided in sections 39-16-09 and 39-16-10 in a sum which shall be sufficient in the judgment of the commissioner to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against such driver, provided that notice of such suspension and opportunity for hearing shall be sent by the commissioner to such driver not less than ten days prior to the effective date of such suspension and shall state the amount required as security. However, if a driver, either resident or nonresident, involved in such accident purchases a policy of insurance with at least the amount of coverage required by this section, and files proof and satisfies financial responsibility requirements thereof with the commissioner, that driver shall be allowed to retain his license or privilege until such time as the driver has accepted responsibility for the accident or agreed to a settlement of claims arising from the accident or until a court of this state has determined that the driver was negligent or responsible for the accident in whole or in part. If

* NOTE: Section 39-16-05 was also amended by section 3 of House Bill No. 1331, chapter 435, and amended by section 70 of Senate Bill No. 2079, chapter 317.

the driver is found negligent or responsible for the accident, in whole or in part, his license or privilege shall be suspended and shall not be returned until the driver complies with the provisions of this chapter. This section shall not apply under the conditions stated in section 39-16-06, or:

1. To a driver, if he is the owner of the motor vehicle involved in the accident and had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident, affording substantially the same coverage as is required for proof of financial responsibility under chapter 39-16.1.
2. To a driver, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicle, affording substantially the same coverage as required for proof of financial responsibility under chapter 39-16.1.
3. To a driver, if the liability of such driver for damages resulting from such accident is, in the judgment of the commissioner, covered by any other form of liability insurance policy or bond or certificate of self-insurance under section 39-16-32.

No such policy or bond shall be effective under this section unless by an insurance carrier or surety company authorized to do business in this state, except that if such motor vehicle was not registered in the state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance carrier or surety company, if not authorized to do business in this state, shall execute a power of attorney authorizing the commissioner to accept service, on its behalf, of notice or process in any action upon such policy or bond arising out of such accident; provided, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property to a limit of ~~not less than ten at least~~ twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon receipt of notice of such accident, the insurance carrier or surety company which issued such policy or bond shall furnish for filing with the commissioner a written notice that such policy or bond was in effect at the time of such accident, or the department may rely upon the accuracy of the information and the required report of an accident as to the existence of insurance or a bond unless and until the department has reason to believe that the information is erroneous.

SECTION 2. AMENDMENT. Section 39-16.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-02. "Proof of financial responsibility" defined. "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring ~~subsequent to~~ after the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle, in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of ~~ten~~ twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

SECTION 3. AMENDMENT. Subsection 3 of section 39-16.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. When ~~ten~~ twenty-five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of damage to or destruction of property of others as a result of any one accident. Payments made in settlement of any claims because of bodily injury, death, or property damages arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

SECTION 4. AMENDMENT. Subdivision b of subsection 2 of section 39-16.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. Shall insure the person named therein and any other person, as insured, using such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ~~ten~~ twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

Approved March 22, 1985

CHAPTER 443

HOUSE BILL NO. 1140
(Committee on Social Services and Veterans Affairs)
(At the request of the Highway Department)

BLOOD TESTS IN MOTOR VEHICLE FATALITIES

AN ACT to amend and reenact section 39-20-13 of the North Dakota Century Code, relating to blood tests in motor vehicle accidents resulting in a fatality.

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

* SECTION 1. AMENDMENT. Section 39-20-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-13. State toxicologist to examine blood specimens of fatalities in accidental deaths involving a motor vehicle. In cases of death ~~occurring on or after July 1, 1969,~~ resulting from a motor vehicle accident or other unnatural death occurring in a motor vehicle, the county coroner shall require that a blood specimen of at least twenty cubic centimeters be withdrawn from the body of the decedent within twenty-four hours after his death by a coroner, coroner's physician, or other qualified person, prior to embalming. The blood specimens shall be collected and preserved by methods and techniques established by the state toxicologist. The blood so drawn shall be sent to the state toxicologist for analysis for alcohol, carbon monoxide, and other drug content. The state toxicologist shall keep a record of all such examinations to be used for statistical purposes. The records must be made available to the commissioner for use by the national highway traffic safety administration in analyzing fatal accidents. The information in the possession of the commissioner may be obtained from the state toxicologist only as provided in this section. Except as provided, the results of the examinations referred to in this section shall be used only for statistical purposes, except that the results shall be released upon the issuance of a subpoena duces tecum by a court of competent jurisdiction in any civil or criminal action. The cumulative results of the examinations, without identifying the individuals involved, shall be disseminated to interested state and local officials and made public by the state toxicologist. Any person drawing blood and any person making any examination of blood under the terms of this section shall be immune from all liability, civil or criminal, that might otherwise be incurred or imposed. The individual drawing the blood sample shall be paid a fee of five dollars by the state toxicologist for each acceptable blood specimen submitted for analysis under the requirements of this section.

Approved March 27, 1985

* NOTE: Section 39-20-13 was also amended by section 20 of Senate Bill No. 2373, chapter 429.

CHAPTER 444

HOUSE BILL NO. 1449
(Hedstrom)

CHILD RESTRAINT DEVICE PENALTY

AN ACT to amend and reenact subsection 2 of section 39-21-41.2 of the North Dakota Century Code, relating to child restraint devices; and to provide a penalty.

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

SECTION 1. AMENDMENT. Subsection 2 of section 39-21-41.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Violation of this section is an ~~infraction~~ and is punishable by a fine not to exceed twenty dollars. The fine may be suspended on showing proof of acquiring a child restraint system complying with this section within one month of the violation.

Approved March 14, 1985

CHAPTER 445

HOUSE BILL NO. 1201
(Committee on Transportation)
(At the request of the Highway Patrol)

DRAWBAR FOR TOWED VEHICLES

AN ACT to amend and reenact section 39-21-44.2 of the North Dakota Century Code, relating to a drawbar or other connection between vehicles.

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

SECTION 1. AMENDMENT. Section 39-21-44.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-44.2. Drawbar or connection between vehicles - Regulations and precautions required. The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed fifteen feet {4.57 meters} in length from one vehicle to the other be of such design, strength, and construction so as to prevent the unintentional uncoupling of the vehicles. Whenever such connection consists of a chain, rope, or cable, there shall be displayed thereon a red flag or other signal or cloth not less than twelve inches {30.48 centimeters} both in length and width.

Approved February 22, 1985

CHAPTER 446

SENATE BILL NO. 2167
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

ODOMETER ALTERATION

AN ACT to create and enact a new subsection to section 39-22-04 of the North Dakota Century Code, relating to grounds for denial, suspension, cancellation, or revocation of dealer's license; to amend and reenact section 39-21-51 of the North Dakota Century Code, relating to alteration of odometers; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 39-21-51 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-51. Alteration of odometers or other mileage recorders, hour meters on tachometers or other hour recorders - Penalty. Any person altering a person may not willfully, as defined in section 12.1-02-02, alter a motor vehicle odometer or other mileage recorder, hour meter on tachometer or other hour recorder for the purpose of deceiving another; shall be guilty of an infraction. Violation of this section is a class C felony if the person has previously been convicted of violating this section, or if the person has violated this section with respect to more than one vehicle, and a class B misdemeanor in all other cases.

SECTION 2. A new subsection to section 39-22-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

For having violated any state or federal law relating to alteration of odometers.

Approved March 31, 1985

CHAPTER 447

SENATE BILL NO. 2447
(Freborg)PERFORMANCE BONDS ON GOVERNMENT VEHICLE
PURCHASES

AN ACT to amend and reenact section 39-22-05.2 of the North Dakota Century Code, relating to performance bonds of contracts to sell motor vehicles to governmental agencies.

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

SECTION 1. AMENDMENT. Section 39-22-05.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-05.2. When bid bonds not required in bids to state or political subdivisions. Any A person who submits a bid to the state ~~or~~, any of its agencies, or any of its political subdivisions to sell any type of motor vehicle ~~shall~~ is not be required to submit a bidder's bond or a certified or cashier's check if that person is already bonded pursuant to section 39-22-05. The If the buyer requires a performance bond, then within ten days of the awarding of the contract, the successful bidder shall submit a performance bond to the appropriate state agency or political subdivision in an amount equal to the contract price ~~within ten days of the awarding of the contract.~~

Approved March 22, 1985

CHAPTER 448

SENATE BILL NO. 2223
(Committee on Transportation)
(At the request of the Parks and Recreation Department)

SNOWMOBILES

AN ACT to amend and reenact subsection 9 of section 39-24-01, subsection 5 of section 39-24-09, and section 39-24-09.1 of the North Dakota Century Code, relating to the definition and operation of snowmobiles.

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

SECTION 1. AMENDMENT. Subsection 9 of section 39-24-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice, or a natural terrain and steered by ~~wheels~~, skis, or runners.

SECTION 2. AMENDMENT. Subsection 5 of section 39-24-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. It shall be unlawful for any person to drive or operate any snowmobile in the following ways which are declared to be unsafe and a public nuisance:
 - a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.
 - c. While under the influence of intoxicating liquor or a controlled substance.
 - d. Without a lighted head lamp and tail lamp when required for safety.

- e. In any tree nursery or planting in a manner which damages or destroys growing stock.
- f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the snowmobile exhaust system.
- g. Upon any private land where the private land is posted by the owner or tenant prohibiting trespassing. The name and address of the person posting the land and the date of posting shall appear on each sign in legible characters. The posted signs shall be readable from the outside of the land and shall be placed conspicuously at a distance of not more than ~~eighty rods [402.34 meters]~~ 880 yards [804.68 meters] apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of such signs at or on all gates through such fence or enclosure, shall be construed to be a posting of all such enclosed lands.

SECTION 3. AMENDMENT. Section 39-24-09.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-09.1. Operation by persons under age sixteen. Except as otherwise provided in this section, it shall be 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 pursuant to chapter 28-32 and has received the appropriate snowmobile safety certificate issued by the commissioner, ~~and unless the person is accompanied by a person holding a valid driver's license.~~ The failure of an operator to exhibit a snowmobile safety certificate upon demand to any official authorized to enforce the provisions of this chapter shall be presumptive evidence that such person is not the holder of such certificate.

Approved April 4, 1985

CHAPTER 449

SENATE BILL NO. 2213
(Committee on Transportation)
(At the request of the Highway Patrol)

COMMERCIAL DRIVER TRAINING SCHOOLS

AN ACT to amend and reenact section 39-25-05 of the North Dakota Century Code, relating to the expiration and renewal of commercial driver training school licenses and fees.

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

SECTION 1. AMENDMENT. Section 39-25-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-25-05. Expiration and renewal of licenses - Fees. All licenses shall expire on the last day of the calendar year and may be renewed upon application to the superintendent as prescribed by his regulations. Each application for an original or renewal school license shall be accompanied by a fee of ~~five~~ twenty-five dollars, and each application for an original or renewal instructor's license shall be accompanied by a fee of ~~two~~ ten dollars. Such fees shall be deposited in the state treasury in the state highway fund. No license fees shall be refunded in the event any license is rejected, suspended, or revoked.

Approved March 22, 1985

CHAPTER 450

SENATE BILL NO. 2165
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTORCYCLE WHEEL RIM DIAMETERS

AN ACT to amend and reenact subsection 3 of section 39-27-05 of the North Dakota Century Code, relating to wheel rim diameters for motorcycles.

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

SECTION 1. AMENDMENT. Subsection 3 of section 39-27-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Wheel rim diameters shall not be less than ten inches [25.4 centimeters] and shall otherwise comply with applicable state standards, as promulgated by the registrar of motor vehicles. Two-wheel motorcycles using low pressure tires are exempt from this subsection if the inflated height of the tire is twenty inches or greater.

Approved February 6, 1985

CHAPTER 451

SENATE BILL NO. 2399
(Senator Heinrich)
(Representative Timm)

MOTORCYCLE PASSENGER HANDHOLDS

AN ACT to repeal section 39-27-19 of the North Dakota Century Code,
relating to handhold devices for passengers on motorcycles.

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

SECTION 1. REPEAL. Section 39-27-19 of the North Dakota
Century Code is hereby repealed.

Approved March 22, 1985

CHAPTER 452

HOUSE BILL NO. 1464
(Representatives Richard, Gates, Rydell)
(Senator Langley)

ALL-TERRAIN VEHICLE REGISTRATION

AN ACT to create and enact chapter 39-30 of the North Dakota Century Code, relating to operation, registration, and use of all-terrain vehicles; to provide for first registration of all-terrain vehicles under this Act; to provide a penalty; and to declare an emergency.

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

* SECTION 1. Chapter 39-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

39-30-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "All-terrain vehicle" means a motor vehicle using more than two low pressure tires and with a dry weight of less than twelve hundred pounds [544.31 kilograms].
2. "Dealer" means any person engaged in the business of buying, selling, or exchanging all-terrain vehicles or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of all-terrain vehicles, or who engages in the buying of all-terrain vehicles for resale.
3. "Operate" means to ride in or on and control the operation of an all-terrain vehicle.
4. "Operator" means a person who operates or is in actual physical control of an all-terrain vehicle.
5. "Owner" means a person, other than a lienholder, having the property in or title to an all-terrain vehicle and entitled to its use or possession.
6. "Register" means the act of assigning a registration number to an all-terrain vehicle.

* NOTE: This new chapter has been codified as North Dakota Century Code chapter 39-29.

39-30-02. All-terrain vehicle registration - Title certificate - General requirements. Except as provided in this chapter, a person may not operate an all-terrain vehicle unless it has been registered in accordance with this chapter.

39-30-03. Registration - Application - Issuance - Fees - Renewal.

1. Application for registration must be made to the motor vehicle department in the form the department prescribes and furnishes. The registration must state the name and address of every owner of the all-terrain vehicle and be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
2. On receipt of an application and the appropriate fee, the department shall register the all-terrain vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.
3. The fee for registration of each all-terrain vehicle is five dollars for a registration period of two years. For a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars. For each all-terrain vehicle registered under this chapter, there is an all-terrain vehicle trail tax of five dollars.
4. The owner of an all-terrain vehicle shall renew the registration in the manner the department prescribes and pay the registration fees and applicable tax provided in subsection 3.
5. On application for registration as prescribed in subsection 2, and on payment of the amounts prescribed in subsection 3, an all-terrain vehicle dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers. The dealer's registration numbers may be used only on all-terrain vehicles owned by the dealership.

39-30-04. Exemption from registration - Exemption from fees.

1. Registration and payment of fees is not required of:
 - a. All-terrain vehicles owned and used by the United States or another state or its political subdivisions.
 - b. All-terrain vehicles registered in a foreign country and temporarily used in this state.

- c. All-terrain vehicles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. All-terrain vehicles used exclusively for work on private agricultural lands or on industrial jobsites on private land.
 - e. All-terrain vehicles used exclusively in organized track racing events.
2. All-terrain vehicles owned by the state or any of its political subdivisions are exempt from the registration fees in section 39-30-03.

39-30-05. Disposition of registration fees.

1. Fees from registration of all-terrain vehicles must be deposited with the state treasurer and credited to the motor vehicle registrar fund.
2. The all-terrain vehicle trail tax must be deposited in a state fund in the state treasury. The state parks and recreation 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.

39-30-06. Transfer or termination of all-terrain vehicle ownership - Change of address of owner. Within fifteen days after the transfer of any ownership interest in an all-terrain vehicle, other than a security interest, or the destruction or abandonment of any all-terrain vehicle, or a change of address of the owner as listed with the application for registration, written notice of the fact must be given by the new owner to the registrar in the form registrar requires.

39-30-07. Licensing by political subdivisions. Political subdivisions of this state may not require licensing or registration of all-terrain vehicles.

39-30-08. Rules. Rules for the regulation and use of all-terrain vehicles must be adopted as follows:

1. The department shall adopt rules for the registration of all-terrain vehicles and display of registration numbers.
2. The commissioner may, in the interest of public health, welfare and safety, regulate, by rule, the operation of all-terrain vehicles on state highways. The commissioner's authority to prohibit the use of all-terrain vehicles is limited to the roadways, shoulders, inslopes, and medians within the right of way,

except where such action is necessary to avoid an obstacle. Notwithstanding the racing prohibitions in section 39-08-03.1, the commissioner may, on a case-by-case basis, permit organized and bona fide all-terrain vehicle races on the ditch bottoms, backslopes, and the top of the backslopes of the state highway rights of way. The planning, organization, route selection, and safety precautions of any such race are the sole responsibility of the person obtaining the permit. The commissioner, the department, and the department's employees incur no liability for permitting such races.

3. The director of state parks and recreation shall adopt rules to regulate use of all-terrain vehicles in state parks and other state-owned land described in section 55-08-03.
4. The governing bodies of political subdivisions may adopt rules to regulate use of all-terrain vehicles in areas under their jurisdiction. The governing body of a city may, by ordinance, regulate, restrict, and prohibit the use of all-terrain vehicles operated in the city limits in areas under the exclusive jurisdiction of the city.

39-30-09. Operation of all-terrain vehicles.

1. A person may not operate an all-terrain vehicle on the roadway, shoulder, or inside bank or slope of any road, street, or highway except as provided in this chapter. Except in emergencies, a person may not operate an all-terrain vehicle within the right of way of any controlled access highway.
2. The operator of an all-terrain vehicle may make a direct crossing of a street or highway only if:
 - a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - b. The all-terrain vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
 - c. The operator yields the right of way to all oncoming traffic which constitutes an immediate hazard; and
 - d. In crossing divided highway, the crossing is made only at an intersection of the highway with another public street or highway.
3. A person may not operate an all-terrain vehicle unless it is equipped with at least one headlamp, one taillamp, and

- brakes, all in working order, which conform to standards prescribed by rule of the highway commissioner.
4. The emergency conditions under which an all-terrain vehicle may be operated other than as provided by this chapter are only those that render the use of an automobile impractical under the conditions and at the time and location in question.
 5. A person may not operate an all-terrain vehicle in the following ways, which are declared to be unsafe and a public nuisance:
 - a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.
 - c. While under the influence of intoxicating liquor or a controlled substance.
 - d. Without a lighted headlamp and taillamp.
 - e. In any tree nursery or planting in a manner which damages growing stock.
 - f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the all-terrain vehicle's exhaust system.
 - g. On any private land where the private land is posted prohibiting trespassing. The name and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of such signs, at or on all gates through the fence or enclosure.
 6. Except as provided in section 39-30-10, a person may not operate an all-terrain vehicle without having in possession a valid driver's license or permit.
 7. When an all-terrain vehicle is operated within the right of way of any road, street, or highway, during times or conditions that warrant the use of lights by other motor vehicles, the all-terrain vehicle must be operated in the same direction as the direction of other motor vehicles traveling on the side of the roadway immediately adjacent

to the side of the right of way traveled by the all-terrain vehicle.

8. A person may not operate an all-terrain vehicle within the right of way of any highway while towing a sled, skid, or other vehicle, unless the object towed is connected to the all-terrain vehicle by a hinged swivel and secure hitch.

39-30-10. 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 recreation department 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.

39-30-11. Enforcement. Only peace officers of this state and their respective duly authorized representatives may enforce this chapter.

39-30-12. Penalties. Violation of subdivision b or c of subsection 5 of section 39-30-09 is a class B misdemeanor. Violation of any other provision of section 39-30-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-30-02 is an infraction, for which a fee of twenty-five dollars must be assessed. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

SECTION 2. Shorter registration period for all-terrain vehicles registered in 1985 and 1986. Notwithstanding subsection 3 of section 39-30-03, the first registration period for all-terrain vehicles registered in 1985 and 1986 expires December 31, 1986.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 31, 1985

MUNICIPAL GOVERNMENT

CHAPTER 453

SENATE BILL NO. 2258
(Senators Adams, Lodoen)
(Representatives Smette, Timm)

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS

AN ACT to create and enact a new subsection to section 11-11-14 and a new subsection to section 40-05-01 of the North Dakota Century Code, relating to powers of boards of county commissioners and governing bodies of cities regarding community development block grant funds; and to declare an emergency.

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

SECTION 1. A new subsection to section 11-11-14 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To loan or give money to and secure a mortgage from individuals, associations, or corporations as provided through the procedures established by 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.]. This power applies to all community development block grant transactions of the board of county commissioners, including any transactions prior to the effective date of this Act. The county is not lending its funds or extending its credit to any individual, association, or organization under this subsection and no general liability on the part of the county is incurred.

SECTION 2. A new subsection to section 40-05-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Community development block grant program. To loan or give money to and secure a mortgage from individuals, associations, or corporations as provided through the procedures established by 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.]. This power applies to all community development block grant transactions of the governing body, including any transactions prior to the effective date of this Act. A city is not lending its funds or extending its credit to any individual, association, or organization under this subsection and no general liability on the part of the city is incurred.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 454

HOUSE BILL NO. 1650
(Kloubec, Unhjem)

(Approved by the Committee on Delayed Bills)

ART PROGRAM FUNDS

AN ACT to create and enact a new subsection to section 40-05-01 of the North Dakota Century Code, relating to the power of cities to accept certain moneys and to fund arts programs.

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

SECTION 1. A new subsection to section 40-05-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Encouragement of arts. To accept and disburse moneys received from federal, state, county, city, or private sources for the establishment, maintenance, or encouragement of arts within the municipality. The municipality may provide matching funds before or after receipt of the moneys. The authority of a municipality under this subsection is supplemental to the authority provided in chapter 40-38.1.

Approved March 27, 1985

CHAPTER 455

SENATE BILL NO. 2297
(Lashkowitz, Lodoen, Kilander)

HOME RULE CITY GOVERNMENT STRUCTURE

AN ACT to create and enact a new section to chapter 40-05.1 of the North Dakota Century Code, relating to definitions of the terms "city officers", "executive officer", and "governing body"; to amend and reenact subsection 4 of section 40-05.1-06 of the North Dakota Century Code, to allow a home rule city the power to provide for its own form and structure of government; and to declare an emergency.

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

SECTION 1. A new section to chapter 40-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "City officers" means the elected and appointed officers of the city and includes the governing body of the city and its members.
2. "Executive officer" means the chief officer in whom resides the power to execute the laws of the city.
3. "Governing body" means the body which performs the legislative functions of the city.

SECTION 2. AMENDMENT. Subsection 4 of section 40-05.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government including its governing body, executive officer, and city officers.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 456

SENATE BILL NO. 2342
(Heinrich, Wright)

CITY OFFICERS' COMPENSATION

AN ACT to amend and reenact sections 40-08-07 and 40-09-06 of the North Dakota Century Code, relating to the compensation of city aldermen and commissioners.

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

SECTION 1. AMENDMENT. Section 40-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-07. Compensation of aldermen. ~~The aldermen shall~~ Each alderman may receive such compensation for ~~their~~ services as ~~shall be fixed established~~ by ordinance, but the compensation shall 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, ~~to each alderman not to exceed fifty sixty~~ sixty dollars per month.
2. In cities over two thousand and not exceeding six thousand in population, ~~to each alderman not to exceed ninety one~~ hundred dollars per month.
3. In cities over six thousand and not exceeding thirty thousand in population, ~~to each alderman not to exceed one hundred seventy-five ninety-five~~ dollars per month.
4. In cities having a population of over thirty thousand, ~~to each alderman not to exceed four hundred forty-five~~ dollars per month.

SECTION 2. AMENDMENT. Section 40-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-09-06. Style of board - Oath and salary of commissioners. The commissioners and the president of the board ~~collectively shall constitute and be known as the "board of city commissioners of the city - - -"~~ and shall take an oath faithfully to perform the duties

of their respective offices. ~~The salaries~~ monthly salary of the city commissioners shall ~~each city commissioner must be fixed by ordinance subject to,~~ but the compensation shall 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 one thousand in population, ~~each commissioner may receive a monthly salary of not to exceed~~ forty fifty dollars.
2. In cities over one thousand and not exceeding two thousand in population, ~~each commissioner may receive a monthly salary of not to exceed~~ fifty sixty dollars.
3. In cities over two thousand and not exceeding four thousand in population, ~~each commissioner may receive a monthly salary of not to exceed~~ seventy-five ninety dollars.
4. In cities over four thousand and not exceeding six thousand in population, ~~each commissioner may receive a monthly salary of not to exceed~~ one hundred twenty dollars.
5. In cities over six thousand and not exceeding eight thousand in population, ~~each commissioner may receive a monthly salary of not to exceed~~ one hundred seventy-five two hundred five dollars.
6. In cities over eight thousand and not exceeding twelve thousand in population, ~~each commissioner may receive a monthly salary of not to exceed~~ two hundred twenty-five seventy dollars.
7. In cities over twelve thousand and not exceeding thirty thousand in population, ~~each commissioner may receive a monthly salary of not to exceed~~ three hundred twenty-five ninety dollars.
8. In cities over thirty thousand and not exceeding forty thousand in population, ~~each commissioner may receive a monthly salary of not to exceed~~ five hundred fifty six hundred sixty dollars.
9. In cities having a population of over forty thousand, ~~each commissioner may receive a monthly salary of not to exceed~~ six hundred seventy-five eight hundred ten dollars.

The president of a commission may receive a salary of up to fifty percent more than the level set for ~~commissioners~~ for his city by this section each commissioner upon resolution by the board of city commissioners.

Approved March 31, 1985

CHAPTER 457

SENATE BILL NO. 2337
(Tennefos)CITY ORDINANCE INITIATIVE OR REFERRAL
PETITIONS

AN ACT to amend and reenact section 40-12-03 of the North Dakota Century Code, relating to the requirements for petitions initiating or referring municipal ordinances.

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

SECTION 1. AMENDMENT. Section 40-12-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-12-03. Requirements of petitions for initiative and referendum. Petitions provided for in this chapter shall be signed only by qualified electors of the city. Each petition, in addition to the names of the petitioners, shall contain the name of the street upon, and the number of the house in, which each petitioner resides, ~~his age, and length of residence in the city.~~ It also shall be accompanied by the affidavit of one or more qualified electors of the city stating that the signers were qualified electors of the city at the time of signing, and the number of signers upon the petition at the time when the affidavit was made.

Approved March 30, 1985

CHAPTER 458

HOUSE BILL NO. 1319
(Ulmer, Shaw)

SEWER AND WATER IMPROVEMENT APPROVAL

AN ACT to amend and reenact sections 40-22-15 and 40-22-16 of the North Dakota Century Code, relating to the publication of a resolution of necessity for the creation of sewer or water improvement districts if a portion of the cost is to be raised by service charges; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 40-22-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-15. Resolution declaring improvements necessary - Exception for sewer and water improvements - Contents of resolution - Publication of resolution. After the engineer's report required by section 40-22-10 has been filed and approved, the governing body of the municipality, by resolution, shall declare that it is necessary to make the improvements described therein. A resolution shall not be required, however, if the improvement constitutes a water or sewer improvement as described in subsection 1 of section 40-22-01, unless it is determined that the cost thereof shall be paid in part as is provided in section 40-22-16, nor if the governing body determines by resolution that a written petition for the improvement, signed by the owners of a majority of the area of the property included within the district, has been received. The resolution shall refer intelligibly to the engineer's report, and shall include a map of the municipality showing the proposed improvement districts. The resolution shall then be published once each week for two consecutive weeks in the official newspaper of the municipality.

SECTION 2. AMENDMENT. Section 40-22-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-16. Sewer or water improvements and parking lots in municipalities may be paid for by service charges. A municipality constructing a sewer or water improvement or a parking lot under the special assessment method may resolve in the resolution or ordinance required by section 40-22-08 in the case of a sewer or water improvement, or in

the resolution required by section 40-22-15 in the case of a parking lot, that a portion of the cost of the improvement shall be raised by service charges for the use of the improvement, and of the utility or parking system of which it forms a part. If the municipality so resolves, it may determine, in its resolutions, ordinances, and other proceedings relating to the levying of special assessments and the issuing of warrants to pay the cost of such improvement, that a specified portion or all of such cost shall be assessed specially against any property specially benefited and may cause to be assessed only the portion so determined. In such event the entire remainder of such cost, including interest as well as principal of any warrants issued, over and above the amount of special assessments actually collected and received from time to time in the fund of the improvement district, plus any general taxes pledged in accordance with section 40-24-10 and similarly collected and received, shall be paid from the net revenues derived from said service charges; provided, that nothing herein shall affect the power and duty of the governing body to levy a tax for the payment of a deficiency in the improvement district fund at the times and under the conditions set forth in section 40-26-08. All of the applicable provisions of this title relating to special assessments shall be applicable to such improvements except as to the portion of the cost thereof resolved or ordained to be paid by service charges. The governing body of the municipality shall provide for the establishment, imposition, and collection of service charges for the services furnished by such improvement and the utility or parking system of which it forms a part, and in connection therewith it shall have all the rights and powers respecting such service charges as it would have with respect to like matters if such improvement were made in accordance with chapter 40-35. The net revenues derived from the imposition and collection of such service charges or such portion thereof as shall be determined by the governing body in said resolutions and ordinances, shall be paid into the appropriate improvement district funds created pursuant to section 40-24-18. Such revenues when collected shall be used and applied in the same manner as moneys paid into such funds from the collection of special assessments. The governing body of any municipality issuing warrants to finance any such improvement may, in its resolutions and ordinances, establish an assessment reserve in the fund of the improvement district, to which it may appropriate net revenues of the utility or system from time to time received in excess of amounts required, with special assessments and taxes then on hand, to meet the principal and interest next due on such warrants. Prior to November first of any year the governing body may by resolution determine the proportion which the amount then on hand in said assessment reserve, and irrevocably appropriated to the payment of said warrant, bears to the aggregate amount of the installment of the special assessments and taxes levied for the improvement which is payable in the following year, including interest thereon; and the governing body may direct the county auditor to reduce, by not more than a proportionate amount, the total of such installment and interest which would otherwise be placed upon the tax list of the municipality for the current year, against each lot and tract of land assessed or taxed for the

improvement. If such installment of the special assessment on any property has been prepaid, the governing body may direct the city auditor to refund, out of the assessment reserve, to the owner of the property at the time of such refund as indicated in the records of the register of deeds of the county, a sum not exceeding a similar proportion of the principal amount of such installment, excluding interest.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 14, 1985

CHAPTER 459

SENATE BILL NO. 2477
(Olson, Lips)

SPECIAL IMPROVEMENT BIDS

AN ACT to amend and reenact section 40-22-29 of the North Dakota Century Code, relating to limitations on awards of bids for improvements by special assessment.

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

SECTION 1. AMENDMENT. Section 40-22-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-29. Engineer's statement of estimated cost required - Governing body to enter into contracts. Before adopting or rejecting any bid filed under the provisions of this chapter, the governing body shall require the engineer for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract to any bidder if the engineer's estimate prepared pursuant to this section exceeds the engineer's estimate prepared pursuant to section 40-22-10 by forty percent or more. If all bids are not rejected, the governing body shall award the contract to the lowest responsible bidder, upon the basis of cash payment for the work, if such bidder has furnished the certified check and bidder's bond required under the provisions of this chapter.

Approved April 4, 1985

CHAPTER 460

SENATE BILL NO. 2205
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

MUNICIPAL ASSESSMENT APPEALS

AN ACT to amend and reenact section 40-23-15 of the North Dakota Century Code, relating to the meeting at which the governing body of a municipality shall hear and determine appeals and objections to assessments.

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

SECTION 1. AMENDMENT. Section 40-23-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-23-15. Governing body to hear and determine appeals and objections to assessments - Altering assessments - Limitations. At the regular or special meeting of the governing body at which the assessment list is to be acted upon, any person aggrieved by the determination of the special assessment commission in regard to any assessment who has appealed therefrom as provided in section 40-23-14 may appear before the governing body and present his reasons why the action of the commission should not be confirmed. The governing body shall hear and determine the appeals and objections and may increase or diminish any of such assessments as it may deem just, except that the aggregate amount of all the assessments returned by the commission shall not be changed and no assessments as adjusted shall exceed the benefits to the parcel of land on which it is assessed as determined by the assessment commission.

Approved March 30, 1985

CHAPTER 461

SENATE BILL NO. 2325
(Lodoen)

CERTIFICATION OF SPECIAL ASSESSMENTS

AN ACT to amend and reenact section 40-24-11 of the North Dakota Century Code, relating to the payment of special assessments.

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

SECTION 1. AMENDMENT. Section 40-24-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-24-11. Certification of assessments to county auditor. Annually, the city auditor shall certify to the county auditor all uncertified installments of assessments which are to be extended upon the tax lists of the municipality for the current year, in the manner provided in section 40-24-12. The annual certification shall continue until the amount of moneys on deposit in the fund established pursuant to section 40-24-18 is sufficient to cover outstanding principal of and interest on any obligations issued to fund such projects, and in addition thereto, to repay the city for any payments made by the city to fund deficiencies in the fund established pursuant to section 40-24-18.

Approved March 27, 1985

CHAPTER 462

HOUSE BILL NO. 1244
(Representatives Hughes, Strinden)
(Senator Lodoen)

REFUNDING SPECIAL ASSESSMENT WARRANTS OR BONDS

AN ACT to amend and reenact sections 40-27-06, 40-27-11, and 40-27-13 of the North Dakota Century Code, relating to refunding special assessment warrants or bonds.

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

SECTION 1. AMENDMENT. Section 40-27-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-06. Refunding special assessment warrants or bonds - Purpose for which issuable. Any municipality having valid outstanding special assessment warrants or bonds issued pursuant to this title which are past due, or to become due within one year, in whole or in part as to principal or interest or both or which are redeemable either at the option of the municipality or with the consent of the warrant holders or bondholders may issue refunding special assessment warrants or bonds if there is not sufficient money in the special improvement fund against which such warrants or bonds are drawn to pay the same principal or interest or both or if a deficiency is likely to occur in the fund within one year for payment of principal or interest thereon. Such refunding special assessment warrants or bonds may be issued for any of the following purposes:

1. To extend the maturities of the special assessment warrants or bonds.
2. To reduce the rate of interest on the special assessment warrants or bonds.
3. To equalize the general tax which the municipality may be, or may become, obligated to levy to discharge deficiencies in the fund against which the special assessment warrants or bonds are drawn.
4. To consolidate two or more outstanding issues of warrants or bonds.

SECTION 2. AMENDMENT. Section 40-27-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-11. Special fund created for payment of refunding special assessment warrants or bonds - Procedure on paying refunded warrants or bonds. A special fund or special funds shall be created in accordance with this section for the payment of refunding special assessment warrants or bonds. Such special fund may be created as a single consolidated fund for warrants or bonds issued to refund special assessment warrants or bonds of more than one district, or a separate special fund may be created for warrants or bonds issued to refund special assessment warrants or bonds of each district. In either case, the refunded warrants or bonds shall not be canceled but shall be retained by the municipality as an asset of the fund from which the refunding warrants or bonds are payable. The special fund or funds from which the refunded warrants or bonds are payable shall be continued, and payments therefrom shall be made on the warrants or bonds drawn thereon, in the same manner as though none of such warrants or bonds had been refunded. All payments made on the principal and on the interest of refunded warrants or bonds shall be credited to the fund from which the appropriate refunding warrants or bonds are payable and shall be applied in payment of the principal and on the interest on the refunding warrants or bonds in the manner prescribed by the resolution authorizing the issuance of such refunding warrants or bonds. To the extent refunding warrants or bonds are issued to refund the principal or interest, or both, of warrants or bonds, due or to become due within one year, for which a deficiency exists or is likely to exist in the fund or funds against which such outstanding warrants or bonds are drawn due to nonpayment or anticipated nonpayment of special assessments, any payments of such delinquent special assessments and such amounts of accrued interest and penalty thereon as necessary shall be set aside for the payment or redemption of the refunding warrants or bonds issued to fund such delinquencies.

SECTION 3. AMENDMENT. Section 40-27-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-13. Refunding callable funding bonds or refunding warrants - Terms and conditions. Any municipality may refund, according to the procedure set forth in this chapter, any funding bonds issued under this chapter which are callable prior to maturity or which shall be surrendered voluntarily for refunding, by the issuance of bonds upon the same terms and conditions except as to interest, whenever by so doing a saving in interest can be effected. Any municipality having valid outstanding refunding special improvement warrants or bonds issued pursuant to this chapter, which are ~~past~~ due, or to become due within one year, in whole or in part as to principal or interest or both or which are redeemable either at the option of the municipality or with the consent of the warrant or bondholders, may issue new refunding special improvement bonds to refund such outstanding warrants or bonds, if there is not sufficient money in the fund or funds against which such outstanding refunding warrants or bonds are drawn to pay the ~~same~~ principal or interest or both or

if a deficiency is likely to occur in the fund or funds within one year for payment of principal or interest thereon. Such new bonds may be issued for the purpose of extending the maturities of the outstanding refunding warrants or bonds, or reducing the debt service thereon, or equalizing the general tax which the municipality may be, or may become, obligated to levy to discharge deficiencies in the fund or funds against which they are drawn. Such new bonds shall be issued according to the procedure set forth in this chapter for the issuance of the original refunding special improvement warrants or bonds. In any case where refunding improvement bonds are issued and sold six months or more before the earliest date on which all outstanding refunding improvement warrants or bonds of the issue to be refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the new bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each warrant or bond refunded to its maturity or, if it is prepayable and called for redemption, to an earlier prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such warrant or bond at maturity or, if prepayable and called for redemption, at the earlier redemption date, and any premium required for redemption on such date. The governing body's resolution authorizing the new bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and may provide for the call for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the new bonds. Moneys on hand in the refunding improvement bond fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.

Approved March 27, 1985

CHAPTER 463

HOUSE BILL NO. 1200
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

SIDEWALK AND CURBING ASSESSMENT WARRANT PAYMENT

AN ACT to amend and reenact sections 40-29-16 and 40-31-10 of the North Dakota Century Code, relating to the payment by cities of sidewalk assessment warrants and curbing assessment warrants from the sidewalk special fund and the curbing special fund.

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

SECTION 1. AMENDMENT. Section 40-29-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-29-16. City auditor to pay warrants from special fund ~~--Cancellation of warrants.~~ The city auditor shall pay sidewalk assessment warrants and interest coupons attached thereto as they mature and are presented for payment thereon at the time or times and in the manner designated by the governing body out of the sidewalk special fund and shall cancel the same when paid.

SECTION 2. AMENDMENT. Section 40-31-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-31-10. City auditor to pay warrants from special fund ~~--Cancellation of warrants.~~ The city auditor shall pay curbing assessment warrants and interest coupons attached thereto as they mature and are presented for payment thereon at the time or times and in the manner designated by the governing body out of the curbing special fund, and he shall cancel the same when paid.

Approved March 1, 1985

CHAPTER 464

HOUSE BILL NO. 1270
(Representative Unhjem)
(Senator Waldera)

LIBRARY RECORDS NOT OPEN RECORDS

AN ACT to create and enact a new section to chapter 40-38 of the North Dakota Century Code, relating to records maintained by public libraries.

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

SECTION 1. A new section to chapter 40-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Library records - Open records exception. Any record maintained or received by a library receiving public funds, which provides a library patron's name or information sufficient to identify a patron together with the subject about which the patron requested information, is considered private and is excepted from the public records disclosure requirements of section 44-04-18. These records may be released when required pursuant to a court order or a subpoena.

Approved March 14, 1985

CHAPTER 465

HOUSE BILL NO. 1174
(Committee on Political Subdivisions)
(At the request of the State Auditor)

PREPARATION OF CITY BUDGETS

AN ACT to amend and reenact section 40-40-05 of the North Dakota Century Code, relating to the preparation of municipal budgets.

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

SECTION 1. AMENDMENT. Section 40-40-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-05. Contents of preliminary budget statement. A preliminary budget shall be prepared as required by generally accepted accounting principles. The preliminary budget shall set forth specifically:

- 1- The estimated expenses of the municipality for the current fiscal year-
- 2- The estimated expenditures for the ensuing fiscal year, segregated and itemized under three groups as follows:
 - a- Group A shall cover all maintenance and operation expenses, including all wages, salaries, and other items which comprise the current expenses of the municipality. Although the whole amount paid for wages and salaries may be stated in one sum in the budget statement, there shall be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries or wages and the annual amount paid to each person. Municipalities may also include as items of expense the following, which shall be placed in separate funds:
 - (i) Equipment replacement. Such amount shall not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on current costs, on all equipment

- owned by the city, and no expenditure shall be paid out of said equipment replacement fund except for the purchase of equipment to replace equipment which is worn out, damaged or obsolete. The term "equipment" shall not include structures or building fixtures.
- (2) Snow removal reserve: Such amount shall not exceed the total of the anticipated reasonable costs of snow removal for the ensuing fiscal year, based on current costs and previous experience, and no expenditure shall be paid out of removal reserve fund except for the removal of snow from the public streets or ways.
- (3) Flood control reserve: Such amount shall not exceed the total of the anticipated reasonable costs of flood control for the ensuing fiscal year, based on current costs and previous experience, and no expenditure shall be paid out of said flood control reserve fund except for the actual costs of flood prevention and control to the municipality.
- b. Group B shall cover all capital and betterment expenditures, including new construction, major repairs, and all other items which go toward adding to the permanent improvement and value of the municipal property and may include an item which shall be placed in a separate fund as a building reserve. The building reserve fund item shall not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on original costs on all buildings and structures owned by the city, and no expenditures shall be paid out of the said fund except for purchase, construction, or reconstruction to replace buildings or structures which are obsolete, substandard, or generally unfit for public use.
- e. Group C shall cover all debt retirement requirements, including all amounts required to retire floating indebtedness, bonded indebtedness, and to pay interest thereon during the current fiscal year, and also a statement showing the amounts and terms of bond issues, certificates of indebtedness, and warrants or other debts to be taken care of by the levies for debts retirement.
- 3- The estimated cash balance standing to the debit or credit of the municipality at the end of the current fiscal year.
- 4- An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than

direct property taxes, and a statement of all the uncollected taxes due to the municipality:

in addition to the specific sums provided for under groups A and B, the governing body may include in group A, and may appropriate for contingent expenses not otherwise provided for, a sum not exceeding five percent of the total amount of the sums set forth in groups A and B:

1. An estimated revenue schedule for the general fund of the municipality, including the following information:
 - a. The actual revenues received from all sources during the preceding fiscal year.
 - b. The estimated revenues from all sources for the current fiscal year.
 - c. An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than direct property taxes.
2. An appropriations schedule for the general fund of the municipality, including the following information:
 - a. The actual expenditures for all purposes for the preceding fiscal year.
 - b. The estimated expenditures for all purposes for the current fiscal year.
 - c. The estimated expenditures for all purposes for the ensuing fiscal year. Expenditures shall be segregated and itemized as follows:
 - (1) Current expenditures. This shall include all maintenance and operation expenses, including all wages, salaries, and other items which comprise the current expenditures of the municipality. Although the whole amount paid for wages and salaries may be stated in one sum in the budget statement, there shall be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries or wages and the annual amount paid to each person. Municipalities may include an item of expense for equipment replacement, the amount of which shall not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on current costs, on all equipment owned by the city, and no expenditure shall be paid out of said equipment replacement fund except for the purchase of equipment to

replace equipment which is worn out, damaged, or obsolete. The term "equipment" shall not include structures or building fixtures. The expense for equipment replacement shall be placed in a separate fund. Current expenditures are categorized as general government, public safety, public works, health and welfare, culture and recreation, and other budgeted items of a current nature.

(2) Capital expenditures. This shall include all capital and betterment expenditures, including new construction, major repairs, and all other items which go toward adding to the permanent improvement and value of the municipal property an item which shall be placed in a separate fund as a building reserve. The building reserve fund item shall not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on the original costs of all buildings and structures owned by the city, and no expenditures shall be paid out of the said fund except for purchase, construction, or reconstruction to replace buildings or structures which are obsolete, substandard, or generally unfit for public use.

(3) Debt service expenditures. This shall cover all debt retirement requirements, including all amounts required to retire floating indebtedness, bonded indebtedness, and to pay interest thereon during the current fiscal year.

3. A separate schedule for each special revenue fund of the municipality, including the following information:

- a. The actual revenues received from all sources during the preceding fiscal year.
- b. The estimated revenues from all sources for the current fiscal year.
- c. An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than direct property taxes.
- d. The actual expenditures for all purposes for the preceding fiscal year.
- e. The estimated expenditures for all purposes for the current fiscal year.
- f. The estimated expenditures for all purposes for the ensuing fiscal year.

4. A separate schedule for each enterprise fund of the municipality, including the following information:
 - a. The estimated revenues for the current fiscal year.
 - b. The estimated revenues for the ensuing fiscal year.
 - c. The estimated expenditures for the current fiscal year.
 - d. The estimated expenditures for the ensuing fiscal year.
5. The estimated cash balance standing to the debit or credit of the municipality at the end of the current fiscal year for the general fund, each special revenue fund, and each enterprise fund.
6. A statement of all uncollected taxes due to the municipality.
7. A statement of all uncollected special assessments due to the municipality.
8. A statement showing the amounts and terms of bond issues, certificates of indebtedness, and warrants or other debts to be taken care of by the levies for debt retirement.

Approved March 14, 1985

CHAPTER 466

HOUSE BILL NO. 1206
(Riley)

REVIEW OF ZONING BOARD DECISIONS

AN ACT to amend and reenact section 40-47-11 of the North Dakota Century Code, or in the alternative to amend and reenact section 35 of House Bill No. 1082, as approved by the forty-ninth legislative assembly, relating to review of zoning board of adjustment decisions.

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

SECTION 1. AMENDMENT. If House Bill No. 1082 does not become effective, section 40-47-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-47-11. Determination of board of adjustment reviewable by ~~certiorari~~. Every decision of the board of adjustment shall be is subject to review by certiorari in the following manner:

1. A decision of the board of adjustment may be appealed to the governing body of the city by either the aggrieved applicant or by any officer, department, board, or bureau of the city. The appeal must be filed with the city auditor within fifteen days after notice of the decision of the board of adjustment. The governing body of the city shall fix a time, within thirty days, for the hearing of the appeal and shall give due notice of the hearing to the parties. The governing body of the city shall decide the appeal within a reasonable time. Any party may appear in person or by agent or by attorney at the hearing of the governing body on the appeal. The governing body of the city may reverse or affirm the decision of the board of adjustment, in whole or in part, or may modify the order, decision, or determination appealed.
2. A decision of the governing body of the city on an appeal from a decision of the board of adjustment is subject to review by certiorari. The application for a writ of certiorari shall be made to the district court of the county in which the city is situated within fifteen days

after notice of the decision of the board, and such governing body of the city. The writ shall be returnable within twenty days after the rendition of the decision. The court may take such evidence as may be required to determine the questions presented. The supreme court, upon application filed within fifteen days after the determination of the district court, shall review the action of the district court by certiorari.

SECTION 2. AMENDMENT. Section 35 of House Bill No. 1082, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

SECTION 35. Determination of board of adjustment reviewable by certiorari. Every decision of the board of adjustment is subject to review by certiorari in the following manner:

1. A decision of the board of adjustment may be appealed to the governing body of the jurisdiction by either the aggrieved applicant or by any officer, department, board, or bureau of the jurisdiction. The appeal must be filed with the chief administrative officer of the jurisdiction within fifteen days after notice of the decision of the board of adjustment. The governing body of the jurisdiction shall fix a time, within thirty days, for the hearing of the appeal and shall give due notice of the hearing to the party. The governing body of the jurisdiction shall decide the appeal within a reasonable time. Any party may appear in person or by agent or by attorney at the hearing of the governing body on the appeal. The governing body of the jurisdiction may reverse or affirm the decision of the board of adjustment, in whole or in part, or may modify the order, decision, or determination appealed.
2. A decision of the governing body of the jurisdiction on an appeal from a decision from the board of adjustment is subject to review by certiorari. The application for a writ of certiorari must be made to the district court within fifteen days after notice of the decision of the board, and the governing body of the jurisdiction. The writ is returnable within twenty days after the rendition of the board's decision of the governing body of the jurisdiction. The court may take such evidence as required to determine the questions presented. The supreme court, upon application filed within fifteen days after the determination of the district court, shall review the action of the district court by certiorari.

Approved March 14, 1985

CHAPTER 467

SENATE BILL NO. 2211
(Committee on State and Federal Government)
(At the request of the Economic Development Commission)

MIDA BOND ASSESSMENT FEE

AN ACT to repeal section 40-57-09.1 of the North Dakota Century Code, relating to the assessment of a two percent bond issuance fee for all municipal industrial development act bonds guaranteed by the industrial revenue bond guarantee program.

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

SECTION 1. REPEAL. Section 40-57-09.1 of the North Dakota Century Code is hereby repealed.

Approved March 22, 1985

CHAPTER 468

SENATE BILL NO. 2293
(Satrom, Lips)

CITY LODGING TAX REVENUES

AN ACT to amend and reenact section 40-57.3-04 of the North Dakota Century Code, relating to the payment, collection, and distribution of city lodging tax revenues.

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

SECTION 1. AMENDMENT. Section 40-57.3-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.3-04. Payment of tax - Collection by tax commissioner - Administrative expenses allowed - Rules. The tax imposed by this chapter is due and payable monthly and shall be collected monthly and administered by the state tax commissioner in accordance with the relevant provisions of chapter 57-39.2. The amount the tax commissioner shall remit ~~quarterly~~ monthly to each city as taxes collected for that city's visitors' promotion fund shall be reduced by three percent as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident to such collection. The administrative fee shall be deposited in the general fund in the state treasury. The tax commissioner shall adopt rules necessary for the administration of this chapter. The penalties and liabilities provided in sections 57-39.2-18 and 57-39.2-18.1 shall specifically apply to the filing of returns and administration of the tax imposed by this chapter.

Approved March 28, 1985

CHAPTER 469

SENATE BILL NO. 2427
(Reiten)

URBAN RENEWAL TAX EXEMPTION

AN ACT to create and enact a new subsection to section 40-58-20 of the North Dakota Century Code, relating to tax increments in urban renewal areas.

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

SECTION 1. A new subsection to section 40-58-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

As an alternative to the sale of bonds to be amortized with tax increments as provided in this section, the governing body of a municipality may, in its discretion, grant a total or partial tax exemption for the project in order to provide assistance to a project developer in an urban renewal area, pursuant to agreement with the municipality. The amount of annual tax exemption shall be limited to the increment as defined in this section as it applies to the project and may extend for a period not to exceed fifteen years. In determining the total amount of tax exemption to be authorized, the municipality shall give due consideration to the same elements as are involved in the sale of bonds to be amortized by tax increments. The amount to be reimbursed, by tax exemption, to the project developer shall be all or a portion of eligible public costs which have been paid by the developer, plus interest thereon at a rate not to exceed ten percent per annum. The amount of tax exemption shall be an amount sufficient to reimburse the project operator for such eligible costs, amortized pursuant to said agreement between the developer and the city.

Approved March 29, 1985

UNIFORM COMMERCIAL CODE

CHAPTER 470

HOUSE BILL NO. 1607
(Representatives Klundt, Skjerven)
(Senator Langley)

FINANCIAL INSTITUTION ACCOUNT SETOFF

AN ACT to create and enact a new section to chapter 41-04 of the North Dakota Century Code, relating to the privilege of setoff between accounts at financial institutions and to define the term "financial institution".

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

SECTION 1. A new section to chapter 41-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interfund setoffs - Required notice to depositor - Separate document required. A financial institution may provide by contract for the privilege of setting off deposits in the account of a depositor. The contract meets the consent requirement of section 6-03-67 if, at the time the contract is entered into, a written disclosure is made of the right of setoff and the effect of that right on the depositor's other accounts and the depositor has signed a separate document agreeing to those terms. The written disclosure required by this section must be conspicuous as defined under subsection 10 of section 41-01-11. The financial institution shall give immediate notice to the depositor when a setoff action is taken. "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including the Bank of North Dakota, a bank, a savings bank, a trust company, a savings and loan association, or a credit union.

Approved March 27, 1985

CHAPTER 471

HOUSE BILL NO. 1153
(Committee on Industry, Business and Labor)
(At the request of the Commission on Uniform State Laws)

SECURITIES — UNIFORM COMMERCIAL CODE
CHANGES

AN ACT to create and enact sections 41-08-07.1, 41-08-36.1, 41-08-43, 41-08-44, and a new subsection to section 41-09-03 of the North Dakota Century Code, relating to investment securities and a revision of article 8 of the Uniform Commercial Code with appropriate changes in article 9; and to amend and reenact subsections 5, 14, and 20 of section 41-01-11, subsection 2 of section 41-05-14, sections 41-08-02, 41-08-03, 41-08-04, 41-08-05, 41-08-06, 41-08-07, 41-08-09, 41-08-10, 41-08-11, 41-08-12, 41-08-13, 41-08-14, 41-08-15, 41-08-16, 41-08-17, 41-08-18, 41-08-20, 41-08-21, 41-08-22, 41-08-23, 41-08-24, 41-08-25, 41-08-26, 41-08-27, 41-08-28, 41-08-29, 41-08-30, 41-08-31, 41-08-32, 41-08-33, 41-08-34, 41-08-35, 41-08-36, 41-08-37, 41-08-38, 41-08-39, 41-08-40, 41-08-41, 41-08-42, subdivision a of subsection 3 of section 41-09-03, subdivision i of subsection 1 of section 41-09-05, subsection 1 of section 41-09-16, subsection 1 of section 41-09-23, sections 41-09-25, 41-09-26, 41-09-30, and subsection 7 of section 41-09-33 of the North Dakota Century Code, relating to investment securities and a revision of article 8 of the Uniform Commercial Code with appropriate changes to articles 1, 5, and 9.

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

SECTION 1. AMENDMENT. Subsections 5, 14, and 20 of section 41-01-11 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.
14. "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

20. "Holder" means a person who is in possession of a document of title ~~or~~, an instrument, or ~~an~~ a certificated investment security drawn, issued, or endorsed to him ~~or~~, to his order ~~or~~, to bearer, or in blank.

SECTION 2. AMENDMENT. Subsection 2 of section 41-05-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Unless otherwise agreed, when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 41-07-36) or of a certificated security (section 41-08-22) or is forged or fraudulent or there is fraud in the transaction:
 - 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 ~~which~~ that would make it a holder in due course (section 41-03-32) 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
 - b. In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery, or other defect not apparent on the face of the documents, but a court of appropriate jurisdiction may enjoin such the honor.

SECTION 3. AMENDMENT. Section 41-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-02. (8-102) Definitions and index of definitions.

1. In this chapter unless the context otherwise requires:
 - a. A "certificated security" is an instrument a share, participation, or other interest in property of or an enterprise of the issuer or is an obligation of the issuer which:
 - (1) Is represented by an instrument issued in bearer or registered form; ;
 - (2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

- (3) Is either one of a class or series or by its terms is divisible into a class or series of instruments shares, participations, interests, or obligations.
- (4) Evidences a share, participation, or other interest in property or in an enterprise or evidences an obligation of the issuer.
- b. An "uncertificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or is an obligation of the issuer which:
- (1) Is not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;
- (2) Is of a type commonly dealt in upon securities exchanges or markets; and
- (3) Is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.
- c. A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing which that is a certificated security is governed by this chapter and not by chapter 41-03 even though it also meets the requirements of that chapter. This chapter does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange or acquisition by the issuer, that security must be treated as an uncertificated security for purposes of this chapter.
- e- d. A certificated security is in "registered form" when if it specifies a person entitled to the security or to the rights it evidences represents and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.
- d- e. A certificated security is in "bearer form" when if it runs to bearer according to its terms and not by reason of any endorsement.

2. "Clearing corporation" is the Bank of North Dakota or a corporation registered as "clearing agency" under the federal securities laws or a corporation:
- a. At least ninety percent of the whose capital stock of which is held by or for one or more persons (other than individuals) organizations, none of which, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of the corporation, and each of whom which:
 - (1) Is subject to supervision or regulation pursuant to federal or state banking laws or state insurance laws;
 - (2) Is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 federal securities laws; or
 - (3) Is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, and none of whom, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of such corporation the federal securities laws; and
 - b. Any remaining capital stock of which is held by individuals who have purchased such that capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such that capital stock as may be necessary to permit them to qualify as such its directors.
3. "Custodian bank" is any bank or trust company which that is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.
4. "Subsequent purchaser" is a person who takes other than by original issue.
5. Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:
- | | |
|------------------------|---|
| "Adverse claim"- | Section 41-08-17-
<u>41-08-18</u> |
| "Bona fide purchaser"- | Section 41-08-18- |
| "Broker"- | Section 41-08-19- |

<u>"Financial intermediary"</u>	Section 41-08-29
<u>"Guarantee of the signature"</u>	Section 41-08-38-
<u>"Initial transaction statement"</u>	Section 41-08-44
<u>"Instruction"</u>	Section 41-08-24
<u>"Intermediary Bank"- bank"</u>	Section 41-04-05-
<u>"Issuer"</u>	Section 41-08-09-
<u>"Overissue"</u>	Section 41-08-04-
<u>"Secured party"</u>	Section 41-09-05
<u>"Security agreement"</u>	Section 41-09-05

6. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 4. AMENDMENT. Section 41-08-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-03. (8-103) Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

1. The security is certificated and the right of the issuer to such the lien is noted conspicuously on the security thereon; or
2. The security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

SECTION 5. AMENDMENT. Section 41-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-04. (8-104) Effect of overissue - "Overissue".

1. The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but:
 - a. If an identical security which that does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a

that security to for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of the any certificated security, if any, which he holds; or

- b. If a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

2. "Overissue" means the issue of securities in excess of the amount ~~which~~ the issuer has corporate power to issue.

SECTION 6. AMENDMENT. Section 41-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-05. (8-105) Securities Certificated securities negotiable - Statements and instructions not negotiable - Presumptions.

1. Securities Certificated securities governed by this chapter are negotiable instruments.
2. Statements (section 41-08-44), notices, and the like sent by the issuer of uncertificated securities and instructions (section 41-08-24) are neither negotiable instruments nor certificated securities.
3. In any action on a security:
 - a. Unless specifically denied in the pleadings, each signature on ~~the~~ a certificated security or, in a necessary endorsement, on an initial transaction statement, or on an instruction is admitted;
 - b. When If the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;
 - c. When If signatures on a certificated security are admitted or established, production of the instrument security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and
 - d. If signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and
 - e. After it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or

some person under whom he claims is a person against whom the defense or defect is ineffective (section 41-08-10).

SECTION 7. AMENDMENT. Section 41-08-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-06. (8-106) Applicability. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to registration:

1. Registration of transfer of a certificated security;
2. Registration of transfer, pledge, or release of an uncertificated security; and
3. Sending of statements of uncertificated securities are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

SECTION 8. AMENDMENT. Section 41-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-07. (8-107) Securities deliverable transferable - Action for price.

1. Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver transfer securities may deliver transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank or may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.
2. When If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price:
 - a. Of certificated securities accepted by the buyer; and
 - b. Of uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and
 - c. Of other securities, if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

SECTION 9. Section 41-08-07.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

41-08-07.1. (8-108) Registration of pledge and release of uncertificated securities. A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by the secured party. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even though the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this chapter are terminated by the registration of release.

SECTION 10. AMENDMENT. Section 41-08-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-09. (8-201) "Issuer".

1. With respect to obligations on or defenses to a security, "issuer" includes a person who:
 - a. Places or authorizes the placing of his name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced represented by the certificated security;
 - b. Creates shares, participations, or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;
 - c. Directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced represented by certificated securities; or
 - ~~e-~~ d. Becomes responsible for or in place of any other person described as an issuer in this section.
2. With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on the a certificated security or on statements of uncertificated securities sent pursuant to section 41-08-44.
3. With respect to registration of transfer, pledge, or release (part 4 of this chapter) "issuer" means a person on whose behalf transfer books are maintained.

SECTION 11. AMENDMENT. Section 41-08-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-10. (8-202) Issuer's responsibility and defenses - Notice of defect or defense.

1. Even against a purchaser for value and without notice, the terms of a security include:
 - a. If the security is certificated, those stated on the security;
 - b. If the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and these
 - c. Those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like to the extent that the terms so referred to do not conflict with the stated terms stated on the certificate security or contained in the statement. Such a A reference under this subdivision does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits such notice.
2.
 - a- A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than one a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid in the hands of a with respect to the purchaser for value and if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of with respect to a subsequent purchaser for value and without notice of the defect.
 - b- The rule of subdivision a This subsection applies to an issuer which that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

3. Except as otherwise provided in the case of certain unauthorized signatures on issue (section 41-08-13), lack of genuineness of a certificated security or an initial transaction statement is a complete defense even against a purchaser for value and without notice.
4. All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of the a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.
5. Nothing in this section shall be construed to affect affects the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which that is the subject of the contract or in the plan or arrangement pursuant to which such the security is to be issued or distributed.

SECTION 12. AMENDMENT. Section 41-08-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-11. (8-203) Staleness as notice of defects or defenses.

1. After an act or event which that creates a right to immediate performance of the principal obligation evidenced represented by the a certificated security or which that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:
 - a. If the act or event is one requiring the payment of money ~~or~~, the delivery of certificated securities, the registration of transfer of uncertificated securities, or both any of these on presentation or surrender of the certificated security and such those funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and
 - b. If the act or event is not covered by subdivision a and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.
2. A call which that has been revoked is not within subsection 1.

SECTION 13. AMENDMENT. Section 41-08-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-12. (8-204) Effect of issuer's restrictions on transfer. Unless noted conspicuously on the security a restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective except against a any person with without actual knowledge of it unless:

1. The security is certificated and the restriction is noted conspicuously thereon; or
2. The security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to such person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

SECTION 14. AMENDMENT. Section 41-08-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-13. (8-205) Effect of unauthorized signature on issue certificated security or initial transaction statement. An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective except that, but the signature is effective in favor of a purchaser for value and of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if either purchaser is without notice of the lack of authority if and the signing has been done by:

1. An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security ~~or~~, of similar securities, or of initial transaction statements, or thei* the immediate preparation for signing any of them; or
2. An employee of the issuer or of any of the foregoing entrusted with responsible handling of the security or initial transaction statement.

SECTION 15. AMENDMENT. Section 41-08-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-14. (8-206) Completion or alteration of instrument certificated security or initial transaction statement.

1. Where If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:
 - a. Any person may complete it by filling in the blanks as authorized; and

- b. Even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such its incorrectness.
2. A complete certificated security which that has been improperly altered, even though fraudulently, remains enforceable but only according to its original terms.
3. If an initial transaction statement contains the signatures necessary to its validity but is incomplete in any other respect:
 - a. Any person may complete it by filling in the blanks as authorized; and
 - b. Even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of its incorrectness.
4. A complete initial transaction statement that has been improperly altered even though fraudulently, is effective in favor of a purchaser to whom it has been sent but only according to its original terms.

SECTION 16. AMENDMENT. Section 41-08-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-15. (8-207) Rights and duties of issuer with respect to registered owners and registered pledgees.

1. Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.
2. Subject to subsections 3, 4, and 5, the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.
3. The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to convertible uncertificated security is a transfer within the meaning of this section.

4. Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:
 - a. If the instruction specifies a new owner, who may be the registered pledgee, and does not specify a pledgee, register the transfer of the security to the new owner free of pledge;
 - b. If the instruction specifies a new owner and the existing pledgee, register the transfer of the security to the new owner subject to the interest of the existing pledgee; or
 - c. If the instruction specifies the existing owner and another pledgee, register the release of the security from the existing pledge and register the pledge of the security to the other pledgee.

Continuity of perfection of the security interest may not be broken by registration of transfer under subdivision b or by registration of release and pledge under subdivision c if the security interest is assigned.

5. If an uncertificated security is subject to a registered pledge:
 - a. Any uncertificated securities issued in exchange for or distributed with respect to the pledged security must be registered subject to the pledge;
 - b. Any certificated securities issued in exchange for or distributed with respect to the pledged security must be delivered to the registered pledgee; and
 - c. Any money paid in exchange for or in redemption of part or all of the security must be paid to the registered pledgee.
6. Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

SECTION 17. AMENDMENT. Section 41-08-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 41-08-16. (8-208) Effect of signature of authenticating trustee, registrar, or transfer agent.
1. A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated

security to whom the initial transaction statement has been sent where either purchaser is without notice of the particular defect that:

- a. The certificated security or initial transaction statement is genuine;
 - b. His own participation in the issue or registration of the transfer, pledge, or release of the security is within his capacity and within the scope of the authorization received by him from the issuer; and
 - c. He has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.
2. Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

SECTION 18. AMENDMENT. Section 41-08-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-17. (8-301) Rights acquired by purchaser---"Adverse claim"--
--Title acquired by bona fide purchaser.

1. Upon delivery transfer of a security to a purchaser (section 41-08-29), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who has a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security unless the purchaser's rights are limited by subsection 4 of section 41-08-18.
2. A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim-
- 3- A purchaser transferee of a limited interest acquires rights only to the extent of the interest purchased transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.

SECTION 19. AMENDMENT. Section 41-08-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-18. (8-302) "Bona fide purchaser" - "Adverse claim" - Title
acquired by bona fide purchaser.

1. A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who:
 - a. Who takes delivery of a certificated security in bearer form or of one in registered form issued to him or endorsed to him or in blank;
 - b. To whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or
 - c. To whom a security is transferred under the provisions of subdivisions c and g and paragraph 1 of subdivision d of subsection 1 of section 41-08-29.
2. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.
3. A bona fide purchaser in addition to acquiring the rights of a purchaser (section 41-08-17) also acquires his interest in the security free of any adverse claim.
4. A transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security or who as a prior holder of the certificated security had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser.

SECTION 20. AMENDMENT. Section 41-08-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-20. (8-304) Notice to purchaser of adverse claims.

1. A purchaser ~~{including,~~ including a broker for the seller or buyer but excluding an intermediary bank, of a certificated security is charged with notice of adverse claims if:
 - a. The security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
 - b. The security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.
2. A purchaser, including a broker for the seller or buyer but excluding an intermediary bank, to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under subsection 4 of section 41-08-39 at the time of registration and which are noted

in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

3. The fact that the purchaser ~~{of a certificated or uncertificated security,~~ including a broker for the seller or buyer~~}~~ has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser ~~{excluding an intermediary bank}~~ has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

SECTION 21. AMENDMENT. Section 41-08-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-21. (8-305) **Staleness as notice of adverse claims.** An act or event ~~which~~ that creates a right to immediate performance of the principal obligation ~~evidenced~~ represented by ~~the a~~ a certificated security or ~~which that~~ sets a date on or after which the certificated security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase transfer:

1. After one year from any date set for ~~such~~ the presentment or surrender for redemption or exchange; or
2. After six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

SECTION 22. AMENDMENT. Section 41-08-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-22. (8-306) **Warranties on presentment and transfer of certificated securities - Warranties of originators of instructions.**

1. A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value without notice of adverse claims who receives a new, reissued, or reregistered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (section 41-08-27) in a necessary endorsement.

2. A person by transferring a certificated security to a purchaser for value warrants only that:
 - a. His transfer is effective and rightful;
 - b. The security is genuine and has not been materially altered; and
 - c. He knows no fact which might impair the validity of the security.
3. Where If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against ~~such~~ the delivery, the intermediary by ~~such~~ the delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.
4. A pledgee or other holder for security who redelivers ~~the~~ a certificated security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection 3.
5. A person who originates an instruction warrants to the issuer that:
 - a. He is an appropriate person to originate the instruction; and
 - b. At the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.
6. A person who originates an instruction warrants to any person specially guaranteeing his signature (subsection 3 of section 41-08-28) that:
 - a. He is an appropriate person to originate the instruction; and
 - b. At the time the instruction is presented to the issuer:
 - (1) He will be entitled to the registration of transfer, pledge or release; and
 - (2) The transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

7. A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (subsection 6 of section 41-08-28) that:
- a. He is an appropriate person to originate the instruction;
 - b. The uncertificated security referred to therein is valid; and
 - c. At the time the instruction is presented to the issuer:
 - (1) The transferor will be entitled to the registration of transfer, pledge, or release;
 - (2) The transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and
 - (3) The requested transfer, pledge, or release will be rightful.
8. If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of subdivision b and paragraphs 2 and 3 of subdivision c of subsection 7.
9. A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

SECTION 23. AMENDMENT. Section 41-08-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-23. (8-307) Effect of delivery without endorsement - Right to compel endorsement. Where If a certificated security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a bona fide purchaser only as of the time

the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

SECTION 24. AMENDMENT. Section 41-08-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-24. (8-308) Endorsement---How made---Special endorsement--Enderser not a guaranter---Partial assignment Endorsements - Instructions.

1. An endorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such an appropriate person is written without more upon the back of the security.
2. An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.
3. An endorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.
4. An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.
5. An instruction originated by an appropriate person is:
 - a. A writing signed by an appropriate person; or
 - b. A communication to the issuer in any other form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person, but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

6. "An appropriate person" in subsection 1 means:
 - a. The person specified by the certificated security or by special endorsement to be entitled to the security.

7. "An appropriate person" in subsection 5 means:
- a. For an instruction to transfer or pledge an uncertificated security that is then not subject to a registered pledge, the registered owner; or
 - b. For an instruction to transfer or release an uncertificated security that is then subject to a registered pledge, the registered pledgee.
8. In addition to the persons designated in subsections 6 and 7, "an appropriate person" in subsections 1 and 5 includes:
- ~~b-~~ a. Where If the person so specified designated is described as a fiduciary, but is no longer serving in the described capacity, either that person or his successor;
 - ~~e-~~ b. Where If the security or endorsement persons so specifies designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;
 - ~~d-~~ c. Where If the person so specified designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian, or like fiduciary;
 - ~~e-~~ d. Where If the security or endorsement persons so specifies designated are described as more than one person, as tenants by the entirety entireties or with right of survivorship, and by reason of death all cannot sign, the survivor or survivors;
 - ~~f-~~ e. A person having power to sign under applicable law or controlling instrument; or
 - ~~g-~~ f. To the extent that any of the foregoing persons may act through an agent, his authorized agent.
- 4- 9. Unless otherwise agreed, the endorser of a certificated security by his endorsement or the originator of an instruction by his origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in section 41-08-22.
- 5- An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

- 6- 10. Whether the person signing is appropriate is determined as of the date of signing and an endorsement made by or an instruction originated by such a that person does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.
- 7- 11. Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render his endorsement or an instruction originated by him unauthorized for the purposes of this chapter.

SECTION 25. AMENDMENT. Section 41-08-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-25. (8-309) Effect of endorsement without delivery. An endorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificated security.

SECTION 26. AMENDMENT. Section 41-08-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-26. (8-310) Endorsement of certificated security in bearer form. An endorsement of a certificated security in bearer form may give notice of adverse claims (section 41-08-20) but does not otherwise affect any right to registration the holder may possess.

SECTION 27. AMENDMENT. Section 41-08-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-27. (8-311) Effect of unauthorized endorsement or instruction. Unless the owner or pledgee has ratified an unauthorized endorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

- a- 1. He may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and
- b- 2. An issuer who registers the transfer of a certificated security upon the unauthorized endorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction

is subject to liability for improper registration (section 41-08-40).

SECTION 28. AMENDMENT. Section 41-08-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-28. (8-312) Effect of guaranteeing signature ~~or~~, endorsement, or instruction.

1. Any person guaranteeing a signature of an endorser of a certificated security warrants that at the time of signing:
 - a. The signature was genuine;
 - b. The signer was an appropriate person to endorse (section 41-08-24); and
 - c. The signer had legal capacity to sign.
2. Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:
 - a. The signature was genuine;
 - b. The signer was an appropriate person to originate the instruction (section 41-08-24) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of the security, as to which fact the signature guarantor makes no warranty;
 - c. The signer had legal capacity to sign; and
 - d. The taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.
3. Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection 2) but also warrants that at the time the instruction is presented to the issuer:
 - a. The person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and
 - b. The transfer, pledge, or release of the uncertificated security requested in the instruction will be

registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

4. But the The guarantor under subsections 1 and 2 or the special guarantor under subsection 3 does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.
- 2- 5. Any person may guarantee guaranteeing an endorsement of a certificated security and by so doing warrants makes not only the warranties of a signature (subsection 1) guarantor under subsection 1 but also warrants the rightfulness of the particular transfer in all respects. But no
6. Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection 3 but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.
7. No issuer may require a special guarantee of signature (subsection 3), a guarantee of endorsement (subsection 5), or a guarantee of instruction (subsection 6) as a condition to registration of transfer, pledge, or release.
- 3- 8. The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such that person for any loss resulting from breach of the warranties.

SECTION 29. AMENDMENT. Section 41-08-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-29. (8-313) When delivery transfer to the purchaser occurs - Purchaser's broker Financial intermediary as holder bona fide purchaser - "Financial intermediary".

1. Delivery Transfer of a security or a limited interest, including a security interest, therein to a purchaser occurs when only:
 - a. He When he or a person designated by him acquires possession of a certificated security;
 - b. When the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;
 - c. His broker When his financial intermediary acquires possession of a certificated security specially endorsed to or issued in the name of the purchaser;

- e- d. His broker When a financial intermediary, not a clearing corporation sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser;
- (1) A specific certificated security in the financial intermediary's possession;
 - (2) A quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or
 - (3) A quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;
- d- e. With respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, when that person acknowledges that he holds for the purchaser; or
- e- f. Appropriate With respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, when that person acknowledges that he holds for the purchaser;
- g. When appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under section 41-08-36;
- h. With respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, when a written notification, which, in the case of the creation of the security interest, is signed by the debtor, which may be a copy of the security agreement, or which, in the case of the release or assignment of the security interest created pursuant to this subdivision, is signed by the secured party, is received by:
- (1) A financial intermediary on the books of which the interest of the transferor in the security appears;

- (2) A third person, not a financial intermediary, in possession of the security, if it is certificated;
 - (3) A third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or
 - (4) A third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;
- i. With respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, when new value is given by the secured party; or
 - j. With respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under subdivision a, b, c, d, or g, at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.
2. The purchaser is the owner of a security held for him by his broker a financial intermediary, but is not the holder cannot be a bona fide purchaser of a security so held except as in the circumstances specified in subdivisions b, c, d, e, f, g and paragraph 1 of subdivision d of subsection 1. Where if a security so held is part of a fungible bulk, as in circumstances specified in paragraphs 2 and 3 of subdivision d of subsection 1, the purchaser is the owner of a proportionate property interest in the fungible bulk.
 3. Notice of an adverse claim received by the broker financial intermediary or by the purchaser after the broker financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the broker financial intermediary or as to the purchaser. However, as between the broker financial intermediary and the purchaser, the purchaser may demand delivery transfer of an equivalent security as to which no notice of an adverse claim has been received.
 4. A "financial intermediary" is a bank, broker, clearing corporation, or other person, or the nominee of any of them, which in the ordinary course of its business

maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customers.

SECTION 30. AMENDMENT. Section 41-08-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-30. (8-314) Duty to deliver transfer - When completed.

1. Unless otherwise agreed, where a sale of a security is made on an exchange or otherwise through brokers:
 - a. The selling customer fulfills his duty to deliver transfer when he:
 - (1) He places such a certificated security in the possession of the seller broker or of a person designated by the broker or;
 - (2) He, if requested, causes an acknowledgment to be made to the selling broker that ~~it~~ a certificated or uncertificated security is held for him;
 - (3) He causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker; or
 - (4) He places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, provided the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within thirty days thereafter; and
 - b. The A selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to deliver by placing the transfer when he:
 - (1) Places a certificated security or a like security in the possession of the buying broker or a person designated by him or by effecting;
 - (2) Causes an uncertificated security to be registered in the name of the buying broker or a person designated by him;
 - (3) Places in the possession of the buying broker or of a person designated by him a transfer instruction for an uncertificated security, provided the issuer does not refuse to register the requested transfer if the instruction is

presented to the issuer for registration within thirty days thereafter; or

(4) Effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

2. Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to ~~deliver~~ transfer a security under a contract of purchase is not fulfilled until he ~~places the~~:

a. Places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at;

b. At the purchaser's request, causes an acknowledgment to be made to the purchaser that ~~it~~ a certificated or uncertificated security is held for him; or

c. Causes an uncertificated security to be registered in the name of the purchaser or of a person designated by him.

3. Unless made on an exchange, a sale to a broker purchasing for his own account is within ~~this~~ subsection 2 and not within subsection 1.

SECTION 31. AMENDMENT. Section 41-08-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-31. (8-315) Action against ~~purchaser~~ transferee based upon wrongful transfer.

1. Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may, against anyone except a bona fide purchaser ~~reclaim~~:

a. Reclaim possession of the certificated security or obtain wrongfully transferred;

b. Obtain possession of any new certificated security evidencing representing all or part of the same rights or have;

c. Compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

d. Recover damages.

2. If the transfer is wrongful because of an unauthorized endorsement of a certificated security, the owner may also

reclaim or obtain possession of ~~the~~ that security or new certificated security even from a bona fide purchaser if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this chapter on unauthorized endorsements (section 41-08-27).

3. The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and ~~the~~ the transfer of a certificated or uncertificated security enjoined and ~~the~~ a certificated security impounded pending the litigation.

SECTION 32. AMENDMENT. Section 41-08-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-32. (8-316) Purchaser's right to requisites for registration of transfer, pledge, or release on books. Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security must, on due demand, supply his purchaser with any proof of his authority to transfer, pledge, or release or with any other requisite ~~which that~~ may be necessary to obtain registration of the transfer, pledge, or release of the security but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer, pledge, or release.

SECTION 33. AMENDMENT. Section 41-08-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-33. (8-317) Attachment or levy upon security ~~Creditors'~~ rights.

1. No Subject to the exceptions in subsections 3 and 4, no attachment or levy upon a certificated security or any share or other interest evidenced represented thereby ~~which that~~ is outstanding shall be is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security ~~which that~~ has been surrendered to the issuer may be ~~attached or~~ levied upon at the source reached by a creditor by legal process at the issuer's chief executive office in the United States.
2. An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.
3. The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered

in the name of a secured party not a financial intermediary or in the name of a nominee of the secured party may be reached by a creditor by legal process upon the secured party.

4. The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on the books of which the interest of the debtor appears.
5. Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection 3 or 4 may not operate as a restraint of the transfer of the security, free of the lien, to a third party for new value, but, in the event of the transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary subject to any claims having priority.
6. A creditor whose debtor is the owner of a security shall be is entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such the security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which that cannot readily be attached or levied upon reached by ordinary legal process.

SECTION 34. AMENDMENT. Section 41-08-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-34. (8-318) No conversion by good faith delivery conduct. An agent or bailee who in good faith ~~{including, including~~ observance of reasonable commercial standards if he is in the business of buying, selling, or otherwise dealing with securities}, has received certificated securities and sold, pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which he had control according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to ~~dispose of them take that action.~~

SECTION 35. AMENDMENT. Section 41-08-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-35. (8-319) Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

1. There is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for

sale of a stated quantity of described securities at a defined or stated price;

2. Delivery of the a certificated security or transfer instruction has been accepted, transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within ten days after receipt of the initial transaction statement confirming the registration, or payment has been made but the contract is enforceable under this provision only to the extent of such the delivery, registration, or payment;
3. Within a reasonable time, a writing in confirmation of the sale or purchase and sufficient against the sender under subsection 1 has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or
4. The party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

SECTION 36. AMENDMENT. Section 41-08-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-36. (8-320) Transfer or pledge within a central depository system.

1. In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation reducing the account of the transferor, pledgor, or pledgee and increasing the amount of the obligation, or the number of shares or rights transferred, pledged, or released, if the security is shown on the account of a transferor, pledgor, or pledgee in the books of the clearing corporation; is subject to the control of the clearing corporation; and
 - a. If a security- certificated,
 - a- (1) Is in the custody of a clearing corporation or of, another clearing corporation, a custodian bank, or a nominee of either subject to the instructions of the clearing corporation any of them; and
 - b- (2) Is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

- c. is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged or
- b. If uncertified, is registered in the name of a clearing corporation, another clearing corporation, or a nominee of any of them.
2. Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate, or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or, pledges, or releases of the same security.
 3. A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank (section 41-08-17) representing the amount of the obligation or the number of shares or rights transferred or pledged is effective (section 41-08-29) and the purchaser acquires the rights of the transferor (section 41-08-17). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 41-09-20 and 41-09-21) security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (section 41-08-36). A transferee or pledgee under this section is a holder may be a bona fide purchaser (section 41-08-18).
 4. A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this chapter.
 5. That entries made on the books of the clearing corporation as provided in subsection 1 are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.
 6. Under this section a clearing corporation shall, upon written request, shall furnish to any issuer within a reasonable time a list disclosing the names of all persons

who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each ~~such~~ security of the issuer on deposit. The clearing corporation may charge the issuer a fee for ~~such~~ the written list ~~provided~~, however, ~~that~~ the fee ~~shall~~ ~~must~~ bear a reasonable relation to the cost of furnishing ~~such~~ the list.

SECTION 37. Section 41-08-36.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

41-08-36.1. (8-321) Enforceability - Attachment - Perfection and termination of security interests.

1. A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to subsection 1 of section 41-08-29.
2. A security interest that has thus been transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under subdivision i of subsection 1 of section 41-08-29 becomes unperfected after twenty-one days, unless, within the twenty-one days, the requirements for transfer under any other provision of subsection 1 of section 41-08-29 are satisfied.
3. A security interest in a security is subject to the provisions of chapter 41-09, but:
 - a. No filing is required to perfect the security interest; and
 - b. No written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in subdivision h or i of subsection 1 of section 41-08-29.

A secured party has the rights and duties provided under section 41-09-20, to the extent they apply, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

4. Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of subsection 1 of section 41-08-29. If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer. In that case, the security

interest becomes unperfected after twenty-one days unless, within the twenty-one days, the security, or securities for which it has been exchanged, is transferred to the secured party or a person designated by him pursuant to subsection 1 of section 41-08-29.

SECTION 38. AMENDMENT. Section 41-08-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-37. (8-401) Duty of issuer to register transfer, pledge, or release.

1. Where If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer is under a duty to register the transfer as requested if:
 - a. The security is endorsed or the instruction was originated by the appropriate person or persons (section 41-08-24);
 - b. Reasonable assurance is given that those endorsements or instructions are genuine and effective (section 41-08-38);
 - c. The issuer has no duty to inquire into as to adverse claims or has discharged any such duty (section 41-08-39);
 - d. Any applicable law relating to the collection of taxes has been complied with; and
 - e. The transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.
2. Where If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting ~~it~~ a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.

SECTION 39. AMENDMENT. Section 41-08-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-38. (8-402) Assurance that endorsements and instructions are effective.

1. The issuer may require the following assurance that each necessary endorsement of a certificated security or each instruction (section 41-08-24) is genuine and effective:

- a. In all cases, a guarantee of the signature (subsection 1 or 2 of section 41-08-28) of the person endorsing a certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;
 - b. Where If the endorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;
 - c. Where If the endorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;
 - d. Where If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
 - e. Where If the endorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.
2. A "guarantee of the signature" in subsection 1 means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility, provided such those standards are not manifestly unreasonable.
 3. "Appropriate evidence of appointment or incumbency" in subsection 1 means:
 - a. In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer, pledge, or release; or
 - b. In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible, or in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such the evidence, provided such the standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this subdivision except to the extent that the contents relate directly to the appointment or incumbency.

4. The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subdivision b of subsection 3 both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws, or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.

SECTION 40. AMENDMENT. Section 41-08-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-39. (8-403) Limited duty of inquiry Issuer's duty as to adverse claims.

1. An issuer to whom a certificated security is presented for registration is under a duty to inquire into adverse claims if:
 - a. A written notification of an adverse claim is received at a time and in a manner which that affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or reregistered certificated security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or
 - b. The issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection 4 of section 41-08-38.
2. The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be is no such address, at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from after the date of mailing the notification, either:
 - a. An appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or
 - b. An indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved, from any loss which that it or they may suffer by complying with the adverse claim, is filed with the issuer.
3. Unless an issuer is charged with notice of an adverse claim from a controlling instrument which that it has

elected to require under subsection 4 of section 41-08-38 or receives notification of an adverse claim under subsection 1 of this section, where if a certificated security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

- a. An issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such fiduciary with respect to the particular security.
 - b. An issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer.
 - c. ~~The~~ An issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and ~~even though~~ the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.
4. An issuer is under no duty as to adverse claims with respect to an uncertificated security except:
- a. Claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection 5;
 - b. Claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection 5;
 - c. Claims, including restrictions on transfer not imposed by the issuer, to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and

- d. Claims with notice of which an issuer is charged from a controlling instrument that it has elected to require under subsection 4 of section 41-08-38.
5. If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:
 - a. Including a notation of the claim in any statements sent with respect to the security under subsections 3, 6, and 7 of section 41-08-44; and
 - b. Refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.
6. If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee pursuant to section 41-08-44.
7. Notwithstanding subsections 4 and 5, if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:
 - a. The claim was embodied in legal process that expressly provides otherwise;
 - b. The claim was asserted in a written notification from the registered pledgee;
 - c. The claim was one with notice of which the issuer was charged from a controlling instrument that it had elected to require under subsection 4 of section 41-08-38 in connection with the pledgee's request for transfer; or
 - d. The transfer requested is to the registered owner.

SECTION 41. AMENDMENT. Section 41-08-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-40. (8-404) Liability and nonliability for registration.

1. Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

- a. ~~There were on or with the~~ a certificated security the necessary endorsements or the issuer had received an instruction originated by an appropriate person (section 41-08-24); and
 - b. The issuer had no duty ~~to inquire into~~ as to adverse claims or has discharged any such duty (section 41-08-39).
2. ~~Where~~ If an issuer has registered a transfer of a certificated security to a person not entitled to it the issuer on demand ~~must~~ shall deliver a like security to the true owner unless:
 - a. The registration was pursuant to subsection 1;
 - b. The owner is precluded from asserting any claim for registering the transfer under subsection 1 of section ~~41-04-41~~ 41-08-41; or
 - c. ~~Such~~ The delivery would result in overissue, in which case the issuer's liability is governed by section 41-08-04.
 3. If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the state that would have obtained if the improper registration had not been made unless:
 - a. The registration was pursuant to subsection 1; or
 - b. The registration would result in overissue, in which case the issuer's liability is governed by section 41-08-04.

SECTION 42. AMENDMENT. Section 41-08-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-41. (8-405) Lost, destroyed, and or stolen certificated securities.

1. ~~Where~~ If a certificated security has been lost, apparently destroyed, or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving ~~such~~ a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under section 41-08-40 or any claim to a new security under this section.
2. ~~Where~~ If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully

taken, the issuer ~~must~~ shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

- a. So requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
 - b. Files with the issuer a sufficient indemnity bond; and
 - c. Satisfies any other reasonable requirements imposed by the issuer.
3. If, after the issue of the new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer ~~must~~ shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 41-08-04. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

SECTION 43. AMENDMENT. Section 41-08-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-08-42. (8-406) Duty of authenticating trustee, transfer agent, or registrar.

1. ~~Where~~ If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities or in the issue of new securities or in the cancellation of surrendered securities:
 - a. He is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and
 - b. He has with regard to the particular function he performs the same obligation to the holder or owner of the a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

2. Notice to an authenticating trustee, transfer agent, registrar, or other such agent is notice to the issuer with respect to the functions performed by the agent.

SECTION 44. Section 41-08-43 of the North Dakota Century Code is hereby created and enacted to read as follows:

41-08-43. (8-407) Exchangeability of securities.

1. No issuer is subject to the requirements of this section unless it regularly maintains a system for the issue of the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners that includes the person in whose name the new security is to be registered.
2. Upon surrender of a certificated security with all necessary endorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (section 41-08-39), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.
3. Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:
 - a. The registered owner, if the uncertificated security was not subject to a registered pledge; or
 - b. The registered pledgee, if the uncertificated security was subject to a registered pledge.

SECTION 45. Section 41-08-44 of the North Dakota Century Code is hereby created and enacted to read as follows:

41-08-44. (8-408) Statements of uncertificated securities.

1. Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

- a. A description of the issue of which the uncertificated security is a part.
 - b. The number of shares or units transferred.
 - c. The name, address, and taxpayer identification number, if any, of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee.
 - d. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
 - e. The date the transfer was registered.
2. Within two business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:
- a. A description of the issue of which the uncertificated security is a part.
 - b. The number of shares or units pledged.
 - c. The name, address, and taxpayer identification number, if any, of the registered owner and the registered pledgee.
 - d. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
 - e. The date the pledge was registered.
3. Within two business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:
- a. A description of the issue of which the uncertificated security is a part.
 - b. The number of shares or units released from pledge.

- c. The name, address, and taxpayer identification number, if any, of the registered owner and the pledgee whose interest was released.
 - d. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
 - e. The date the release was registered.
4. An "initial transaction statement" is the statement sent to:
- a. The new registered owner and, if applicable, to the registered pledgee pursuant to subsection 1;
 - b. The registered pledgee pursuant to subsection 2; or
 - c. The registered owner pursuant to subsection 3.

Each initial transaction statement must be signed by or on behalf of the issuer.

5. Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:
- a. A description of the issue of which the uncertificated security is a part.
 - b. The number of shares or units transferred.
 - c. The name, address, and taxpayer identification number, if any, of the former registered owner and the former registered pledgee, if any.
 - d. The date the transfer was registered.
6. At periodic intervals no less frequent than once each year and at any time upon the reasonable written request of the registered owner the issuer shall send to the registered owner of each uncertificated security a dated, written statement containing:
- a. A description of the issue of which the uncertificated security is a part.
 - b. The name, address, and taxpayer identification number, if any, of the registered owner.

- c. The number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement.
 - d. The name, address, and taxpayer identification number, if any, of any registered pledgee and the number of shares or units subject to the pledge.
 - e. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
7. At periodic intervals no less frequent than once each year and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated, written statement containing:
 - a. A description of the issue of which the uncertificated security is a part.
 - b. The name, address, and taxpayer identification number, if any, of the registered owner.
 - c. The name, address, and taxpayer identification number, if any, of the registered pledgee.
 - d. The number of shares or units subject to the pledge.
 - e. A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under subsection 4 of section 41-08-39) to which the uncertificated security is or may be subject or a statement that there are no such liens, restrictions, or adverse claims.
8. If the issuer sends the statements described in subsections 6 and 7 at periodic intervals no less frequent than quarter-annually, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.
9. Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows:

This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security.

SECTION 46. AMENDMENT. Subdivision a of subsection 3 of section 41-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. This subsection applies to accounts (other than an account described in subsection 5 on minerals) and, general intangibles other than uncertificated securities, and to goods which that are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, roadbuilding and construction machinery, and commercial harvesting machinery and the like, if the goods are equipment or are inventory-leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection 2.

SECTION 47. A new subsection to section 41-09-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Uncertificated securities. The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.

SECTION 48. AMENDMENT. Subdivision i of subsection 1 of section 41-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- i. "Instrument" means a negotiable instrument (defined in section 41-03-04), ~~or~~ a certificated security (defined in section 41-08-02), or any other writing which that evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment.

SECTION 49. AMENDMENT. Subsection 1 of section 41-09-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Subject to the provisions of section 41-04-18 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 ~~which~~ that contains a description of the collateral and, in addition, ~~when~~ 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 50. AMENDMENT. Subsection 1 of section 41-09-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A financing statement must be filed to perfect all security interests except the following:
 - a. A security interest in collateral in possession of the secured party under section 41-09-26.
 - b. A security interest temporarily perfected in instruments or documents without delivery under section 41-09-25 or in proceeds for a ten-day period under section 41-09-27.
 - c. A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.
 - d. A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and fixture filing is required for priority over a conflicting real estate interest in a fixture to the extent provided in section 41-09-34.
 - e. An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor.
 - f. A security interest of a collecting bank (section 41-04-18) 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.
 - g. An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

SECTION 51. AMENDMENT. Section 41-09-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-25. (9-304) Perfection of security interest in instruments, documents, and goods covered by documents - Perfection by permissive filing - Temporary perfection without filing or transfer of possession.

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments ~~(other, other than certificated securities or instruments which that~~ constitute part of chattel paper), can be perfected only by the secured party's taking possession, except as provided in subsections 4 and 5 of this section and subsections 2 and 3 of section 41-09-27.
2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during ~~such that~~ period is subject thereto.
3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.
4. A security interest in ~~instruments or a negotiable documents document or an instrument other than a~~ certificated security is perfected without filing or the taking of possession for a period of twenty-one days ~~from the time after~~ it attaches to the extent that it arises for new value given under a written security agreement.
5. A security interest remains perfected for a period of twenty-one days without filing ~~where if~~ a secured party having a perfected security interest in a negotiable document, an instrument, a negotiable document other than a certificated security, or goods in possession of a bailee other than one who has issued a negotiable document therefor:
 - a. Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection 3 of section 41-09-33; or

- b. Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.
6. After the twenty-one-day period in subsections 4 and 5, perfection depends upon compliance with applicable provisions of this chapter.

SECTION 52. AMENDMENT. Section 41-09-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-26. (9-305) When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subdivision a of subsection 2 of section 41-05-16), goods, instruments other than certificated securities, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such the collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

SECTION 53. AMENDMENT. Section 41-09-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-30. (9-309) Protection of purchasers of instruments and documents, and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (section 41-03-32) 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 ~~41-08-17~~ 41-08-18) and such 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 such those holders or purchasers.

SECTION 54. AMENDMENT. Subsection 7 of section 41-09-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. If future advances are made while a security interest is perfected by filing ~~or~~, the taking of possession, or under section 41-08-36.1 on securities, the security interest has the same priority for the purposes of subsection 5 with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases, a

perfected security interest has priority from the date the advance is made.

Approved April 4, 1985

CHAPTER 472

SENATE BILL NO. 2450
(Senators Bakewell, Redlin, Dotzenrod)
(Representatives Nicholas, Keller)

CENTRAL FILING CROP AND LIVESTOCK PROTECTION

AN ACT to create and enact subsections 9, 10, 11, 12, and 13 to section 41-09-28, four new subsections to section 41-09-42, and a new section to title 41 of the North Dakota Century Code, relating to a central notice system, the protection of buyers of crops and livestock, the responsibilities of the secretary of state for the central notice system, fees chargeable, and transition; to amend and reenact subsection 8 of section 11-18-01, subsection 1 of section 41-09-28, and section 41-09-46 of the North Dakota Century Code, relating to sales of crops or livestock, responsibilities of the secretary of state, and financing statements; to repeal subsections 4, 5, 6, 7, and 8 of section 41-09-28, relating to the certificate of ownership law; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subsection 8 of section 11-18-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Furnish upon written or telephonic request to ~~merchants,~~ ~~as referred to in subsection 7 of section 41-09-28,~~ ~~persons~~ the information contained in financing statements filed to perfect a security interest pursuant to chapter 41-09 when the collateral is farm products, and to provide written confirmation of the oral information provided upon receipt of a fee which shall be the same as for recording that instrument.

SECTION 2. AMENDMENT. Subsection 1 of section 41-09-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A buyer in the ordinary course of business (subsection 9 of section 41-01-11) other than a person buying farm products from a person engaged in farming operations takes

free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence. A crop or livestock buyer is a buyer in the ordinary course of business as to security interests and liens if such person qualifies under the provisions of subsection 13. As used in this section, a crop or livestock buyer is a person who buys crops or livestock from, or who sells crops or livestock on a fee or commission for, a person engaged in farming operations.

SECTION 3. Subsections 9, 10, 11, 12, and 13 to section 41-09-28 of the North Dakota Century Code are hereby created and enacted to read 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 production, fertilizer, farm chemicals, and seed, 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 a form prescribed by him 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.
 - 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.

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.

10. A secured party who files the prescribed form with the secretary of state pursuant to subsection 9 shall advise the person engaged in farming operations of all of the following at the time the loan is made:
 - a. That the secured party will be filing such form with the secretary of state.
 - b. Of the information that will be part of the central notice system.
 - c. That the secretary of state will generate a list or lists monthly which will contain such information.
 - d. That a crop or livestock buyer is required to enter on the check or draft the name of secured parties or lienholders and the person engaged in farming operations so long as such information is part of the central notice system with the office of the secretary of state.
 - e. That at any time the debt is repaid, the secured party shall advise the person engaged in farming that the person has the right to demand a release of the debt, that the release must be filed with the appropriate officers by the secured party within thirty days.
11. When a crop or livestock buyer issues a check or draft to a person engaged in farming operations in payment for crops or livestock in order to take free of security interests or liens against such crops or livestock, the crop or livestock buyer must issue the check or draft for payment jointly to the person engaged in farming operations and those secured parties or lienholders who have a security interest or lien in the crops or livestock sold and whose names appear on the most current list or lists distributed by the secretary of state at the time the check or draft is issued. No civil action may be commenced by a secured party or lienholder against a crop or livestock buyer for a loss incurred as a result of issuing a check or draft after January 1, 1986, which does not include the name of a secured party or lienholder under this section more than eighteen months after the date of the check or draft unless within the eighteen-month period the secured party or lienholder sends a notice as provided herein, but in no event can the action be commenced more than five years after the date of the check or draft. The notice must do all of the following:
 - a. Be sent by certified mail to, or personally served upon, the crop or livestock buyer.

- b. Name the person engaged in farming operations and the date of the check or draft which gives rise to the claim.
 - c. State the intention of the secured party or lienholder to make a claim.
 - d. State the amount the secured party or lienholder is claiming.
 - e. Give a description of and the amount of crops or livestock upon which the claim is based.
 - f. State that the secured party or lienholder has commenced an action seeking judgment against the person engaged in farming operations or such person has filed or has been placed in bankruptcy or receivership proceedings under chapter 32-10.
12. No complaint by a secured party or lienholder shall be filed or served against a crop or livestock buyer for collection of any loss sustained by the secured party or lienholder through any transaction filed pursuant to subsection 9 until all of the following have been accomplished and alleged:
- a. That a judgment has been obtained and a good faith effort made to collect that judgment against the person engaged in farming operations, or that proceedings against the person engaged in farming operations were stayed by federal bankruptcy proceedings, or that receivership proceedings have been commenced under chapter 32-10.
 - b. That within eighteen months following the date of the check or draft, the notice required to be sent pursuant to subsection 11 was served upon the crop or livestock buyer and reciting or incorporating by reference all the information contained in that notice.
 - c. List any other collateral taken by the secured party or lienholder as security on the same debt from the person engaged in farming operations, including a statement of value, status, and plans for application of such collateral to the indebtedness of the person engaged in farming operations.
13. A crop or livestock buyer takes free of any security interest created by, or any lien against crops or livestock of, the person engaged in farming operations if any of the following apply:

- a. The crop or livestock buyer has complied with the requirements of subsection 11 of this section.
- b. No evidence of security interests or liens appear on the most current lists prepared and distributed by the secretary of state pursuant to subsections 3 and 4 of section 41-09-46.
- c. The name of the person represented to be the seller of the crops or livestock does not appear on the most current lists prepared and distributed pursuant to subsections 3 and 4 of section 41-09-46.

SECTION 4. AMENDMENT. Section 41-09-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-46. (9-407) Information from filing officer - Central notice - 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 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 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 certificate shall be 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 central notice system which shall contain the information filed with his office pursuant to subsection 9 of section 41-09-28. From the 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 the information as filed on the forms pursuant to subsection 9 of section 41-09-28. The list shall 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, the lists shall be in printed form and on

microfiche. Each list shall conspicuously note its effective date.

4. The lists prepared pursuant to subsection 3 shall 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 shall verbally provide information contained on the list generated through the central notice system when the collateral is crops or livestock. The requesting party may request a certificate from the secretary of state and the secretary of state shall confirm the information given. The fee for a verbal request and such a certificate shall be as provided by section 41-09-42.

SECTION 5. Four new subsections to section 41-09-42 of the North Dakota Century Code are hereby created and enacted to read as follows:

The fee for filing a form with the secretary of state pursuant to subsection 9 of section 41-09-28 is not to exceed five dollars.

The fee for furnishing information on a verbal request pursuant to subsection 5 of section 41-09-46 is two dollars.

The fee for furnishing a certificate pursuant to subsection 5 of section 41-09-46 is five dollars.

The fee for furnishing lists pursuant to subsection 4 of section 41-09-46 shall be established by the secretary of state, but not to exceed eight dollars for a microfiche list and twenty-five dollars for a printed list.

SECTION 6. A new section to title 41 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transition provision to 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.

SECTION 7. REPEAL. Subsections 4, 5, 6, 7, and 8 of section 41-09-28 of the North Dakota Century Code are hereby repealed.

SECTION 8. EFFECTIVE DATE. Sections 2 and 7 of this Act and subsections 11, 12, and 13 of section 41-09-28 as contained in section 3 of this Act become effective on January 1, 1986.

Approved April 15, 1985

CHAPTER 473

HOUSE BILL NO. 1595
(A. Williams, Dotzenrod, Shide)

NOTICE OF ASSIGNMENT

AN ACT to amend and reenact subsection 3 of section 41-09-39 of the North Dakota Century Code, relating to the notice of an assignment which must be given an account debtor.

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

SECTION 1. AMENDMENT. Subsection 3 of section 41-09-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The account debtor is authorized to pay the assignor until the account debtor receives notification which must be given by certified mail that the amount due or to become due has been assigned and that payment is to be made to the assignee. The notification of assignment need not be made if the intent to assign to an identified assignee is stated and acknowledged in the account documents. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

Approved March 27, 1985

OCCUPATIONS AND PROFESSIONS

CHAPTER 474

HOUSE BILL NO. 1311
(Representative Unhjem)

ABSTRACTERS' BOARD OF EXAMINERS

AN ACT to amend and reenact sections 43-01-04, 43-01-07, 43-01-10, 43-01-11, and 43-01-14 of the North Dakota Century Code, relating to the abstracters' board of examiners.

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

SECTION 1. AMENDMENT. Section 43-01-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-04. Compensation. A member of the board ~~shall receive thirty dollars is entitled to receive compensation in an amount fixed by the board for each day he or portion of a day the member is actually is engaged in the performance of the official duties of his office and such mileage reimbursement as is provided for in section 54-06-09. In addition thereto, he shall receive for the member is entitled to reimbursement for actual and necessary expenses in the amounts provided by law for state officers in section 44-08-04. All funds collected or received by the board shall be deposited and disbursed in accordance with section 54-44-12.~~

SECTION 2. AMENDMENT. Section 43-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-07. Moneys of board - How disbursed. Moneys collected for the board under ~~the provisions of this chapter shall be kept by the secretary-treasurer and disbursed only on warrants signed by the president and the secretary-treasurer. All expenses incident to the examinations required under this chapter, the expenses of preparing and issuing certificates and licenses, the reimbursement of board members' expenses, and stationery, printing, clerk hire, and incidental office expenses must be paid by the board from the fees collected by it, and no expense incurred under this chapter may be a charge against the funds of this state. No part of the funds administered by the board revert to the general fund of this state. At the end of his term, the secretary-treasurer shall account to his successor for any moneys remaining in his hands.~~

SECTION 3. AMENDMENT. Section 43-01-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-10. Certificate of registration - Application - Examination - Fee.

Any person, firm, or corporation desiring to obtain a certificate of authority under the provisions of subsection 2 of section 43-01-09 shall make application therefor to the board and shall pay to the secretary-treasurer thereof an examination fee of two fixed by the board not exceeding five hundred fifty dollars. The application shall be upon a form prepared by the board and shall contain such information as may be desired by it. The board shall fix the date and place for the examination of the applicant and shall give him notice thereof by mail. The applicant shall present himself at the time and place specified in the notice, and the board shall examine him under such rules and regulations as it may prescribe. If the application is made by a firm or corporation, one of the members or officers thereof shall take the examination.

1. Registered abstracters, within the meaning of the chapter, shall comprise all persons who shall, upon the passage of this chapter, be in charge, either individually or jointly with other persons, of the abstract office which is the holder of a valid and subsisting certificate of authority as provided by this chapter and who shall obtain a certificate of registration as hereinafter provided, or persons who shall be granted certificates of registration by the board after passage of this chapter.
2. Any person desiring to obtain a certificate of registration under this chapter shall make application to the board and shall pay to the secretary-treasurer of the board an examination fee of forty fixed by the board not exceeding one hundred dollars except as hereinafter provided. Such application shall be upon a form to be prepared by the board and to contain such information as may be desired by it. Thereupon the board shall fix a date and place for the examination of such applicant, of which notice shall be given to applicant by mail, who shall present himself at such meeting. Whereupon the board shall proceed to examine such applicant or applicants under such rules and regulations as may be adopted by the board.
3. Any person, who, upon the effective date of this chapter, is in charge, either individually or jointly with other persons, of an abstract office which is the holder of a valid and subsisting certificate of authority provided by subsection 2 of section 43-01-09 and who shall make application to the board prior to the expiration of said certificate of authority shall upon the payment of a fee of five fixed by the board not exceeding one hundred dollars be issued a certificate of registration, without

- examination, under such rules as may be provided by said board.
4. The certificate of registration issued by said board under the provisions hereof shall recite, among other things, that the holder thereof has complied with the provisions of this chapter relating to examination or otherwise, and shall entitle the holder of such certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority, under the provisions of this chapter. Certificates of registration shall be issued upon the payment of a ~~five dollar~~ five dollar fee fixed by the board not exceeding one hundred dollars and shall be valid for one year from the date thereof but shall be renewed annually by said board upon application within thirty days prior to the expiration thereof upon a payment of ~~five~~ a fee fixed by the board not exceeding one hundred dollars to the secretary-treasurer of the board. The board may issue temporary certificates of registration in its discretion.
 5. Said board shall keep a register, wherein it shall enter the names of all applications for registration, and for certificates of authority, with their place of business and such other information as may be deemed appropriate, including the action taken by said board thereon, and the dates upon which certificates of registration and certificates of authority are issued.

SECTION 4. AMENDMENT. Section 43-01-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-11. Bonds or liability policy - Deductible policy permitted. Before a certificate of authority shall be issued, the applicant therefor shall file with the secretary-treasurer of the board a surety bond in favor of the state, or an abstractor's liability policy to be approved by the board as to form, sufficiency, and surety thereof and written by a company authorized to write such insurance in this state, in a penal sum or limit of liability equal to ten thousand dollars for each ten thousand inhabitants, or major fraction thereof, residing in the county in which the applicant's office is maintained, as shown by the last official federal or state census preceding the filing of the bond or abstractor's liability policy. Such bond, or abstractor's liability policy, however, shall not be less than one hundred thousand dollars. The bond or liability policy shall be conditioned for the payment by the abstractor of any liability imposed upon him by law for damages arising from any claim against him that may be sustained by or that shall accrue to any person by reason or on account of any negligent act, error or omission in any abstract or certificate of title, or continuation thereof, made and issued by the abstractor. ~~The board shall file all~~ All surety bonds in the office of the county auditor of the county in which the applicant has his place of business,

liability policies, and evidence of annual renewal of the bonds and policies must be filed with the secretary-treasurer of the board. All abstracters' liability policies shall be endorsed to provide that cancellation cannot be effected by either the abstractor or the insurance company without ten days' written notice to the abstracters' board of examiners, ~~who shall file said endorsed policy or a certificate thereof in the office of the county auditor of the county in which the applicant has his place of business.~~ It shall be permissible under this section to file an abstractor's liability policy in the deductible form, provided that the deductible provision shall not exceed one thousand dollars.

SECTION 5. AMENDMENT. Section 43-01-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-14. Certification of authority - Fee - Renewal. A certificate of authority shall be issued to an applicant who successfully passes the examination of the board and complies with the other provisions of this chapter, upon the payment of the registration fee ~~of forty~~ fixed by the board not exceeding one hundred dollars which shall be in addition to the examination fee. A certificate shall be valid for five years after the date thereof. A certificate shall be renewed by the board upon application, made within thirty days prior to the expiration date, accompanied by ~~the sum payment of twenty-five~~ a fee fixed by the board not exceeding one hundred dollars and an affidavit that the applicant has for use in his business a complete set of abstract books or records of all instruments of record in the office of the register of deeds in and for the county in which the applicant has his place of business or has been engaged in good faith in the preparation of such books or records for not less than six months.

Approved March 1, 1985

CHAPTER 475

HOUSE BILL NO. 1278
(Representatives Martinson, Unhjem, Nicholas)

ABSTRACTERS' FEES

AN ACT to amend and reenact sections 43-01-15.1 and 43-01-18 of the North Dakota Century Code, relating to fees chargeable by abstracters.

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

SECTION 1. AMENDMENT. Section 43-01-15.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-15.1. Surface abstracts and mineral abstracts to be furnished upon request. An abstracter shall furnish an abstract of title to the surface of any tract of land, when requested to do so, omitting therefrom all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests except instruments which sever mineral rights or royalties from surface rights. In addition to such surface abstract, an abstracter shall, when requested to do so, furnish a list showing the names of the grantor and grantee and the recording data of all instruments in the chains of title which transfer or convey mineral rights, royalties, or other mineral interests and which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstracter may charge a fee of ~~twenty-five cents~~ one dollar, and no more. When requested to do so, an abstracter shall furnish a mineral abstract of any chain of title to the minerals of any tract of land which shall consist of the instrument severing the mineral rights or royalties from the surface rights and include all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests. If requested, such mineral abstract may be combined with a surface abstract of all instruments affecting title to the tract of land to and including the instrument severing the mineral rights, royalties, or other mineral interests being abstracted.

SECTION 2. AMENDMENT. Section 43-01-18 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-18. Fees chargeable by abstractor. An abstractor may charge the following fees, and no more for making and certifying to an abstract:

1. For each entry on an abstract or continuation thereof, ~~three~~ four dollars.
2. For a complete certification covering the records of the several county offices, ~~forty~~ fifty dollars.
3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title an additional fee of seven dollars and fifty cents, for each quarter section [64.75 hectares] or portion thereof in excess of one, may be charged.
4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, an additional fee of seven dollars and fifty cents, for such premises in each additional block in excess of one, may be charged.
5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax liens, mechanics' liens and mechanics' lien notices, ~~one dollar and fifty cents~~ two dollars.
6. For all miscellaneous instruments, one dollar and fifty cents for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.
7. Such fees as may be fixed by special statute.

Approved March 1, 1985

CHAPTER 476

HOUSE BILL NO. 1118
(Committee on Industry, Business and Labor)
(At the request of the Electrical Board)

ELECTRICAL WIRING AND EQUIPMENT STANDARDS

AN ACT to amend and reenact section 43-09-21 of the North Dakota Century Code, relating to standards for electrical wiring and equipment.

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

SECTION 1. AMENDMENT. Section 43-09-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-09-21. Standards for electrical wiring and equipment. All electrical wiring, apparatus, or equipment shall comply with the rules and regulations of the board, the public service commission, the commissioner of insurance, and the state fire marshal made under authority of the laws of this state and in conformity with the approved methods of construction for safety to life and property. The regulations laid down in the national electrical code and the national electrical safety code as approved by the American engineering national standards committee institute shall be prima facie evidence of such approved methods. Any municipality may make more stringent requirements. No electrical installation shall be connected for use until proof has been furnished to the person, firm, or corporation supplying electrical energy that such regulations have been complied with.

Approved March 14, 1985

CHAPTER 477

SENATE BILL NO. 2330
(Holmberg)

COSMETOLOGY REGULATION AND PRACTICE

AN ACT to amend and reenact subsection 8 of section 15-20.4-02, and sections 43-11-01, 43-11-02, 43-11-03, 43-11-04, 43-11-05, 43-11-06, 43-11-07, 43-11-08, 43-11-10, 43-11-11, 43-11-12, 43-11-13, 43-11-14, 43-11-15, 43-11-16, 43-11-17, 43-11-18, 43-11-19, 43-11-20, 43-11-20.1, 43-11-20.2, 43-11-20.3, 43-11-20.4, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-33, 43-11-34, and 43-11-35 of the North Dakota Century Code, relating to the regulation of cosmetology; and to provide a penalty.

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

SECTION 1. AMENDMENT. Subsection 8 of section 15-20.4-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Schools for hairdressers and cosmetologists of cosmetology regulated under chapter 43-11.

SECTION 2. AMENDMENT. Section 43-11-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-01. Definitions. In this chapter, unless the context or subject matter thereof otherwise requires:

1. "Cosmetology" means any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology shall be defined and shall include, but otherwise not be limited thereby, the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting,

- singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
2. "Student" shall mean means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
 3. "Operator" shall mean means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
 4. "Hairdresser and cosmetologist shop" shall include "Cosmetology salon" includes that part of any building wherein the occupation of a hairdresser or cosmetologist is practiced.
 5. "Student instructor" shall mean means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
 6. "Instructor" shall mean means any person of the age of eighteen years or more, who is a licensed cosmetologist and, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
 7. "Manager-operator" shall mean means any person of the age of twenty-one years or more who has been a licensed cosmetologist for at least one year and who manages or conducts a beauty shop who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
 8. "Board" shall mean means the state board of hairdressers and cosmetologists cosmetology.
 9. "Demonstrator" shall mean means any person who possesses the qualifications of a cosmetologist but who limits his practice to the performing of cosmetological operations upon persons provided for the purpose of being subjects or models upon whom demonstrations are to be performed before groups of students, operators, managers, instructors, or

demonstrators as defined in this section or shopowners or school owners and who is granted permission to promote a product or technique in this state for a limited time in accordance with rules adopted by the board.

10. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.

SECTION 3. AMENDMENT. Section 43-11-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-02. Exemptions from provisions of chapter. ~~The provisions of this~~ This chapter ~~shall~~ does not apply to:

1. Services in case of emergency.
2. Services in case of domestic administration without compensation provided by persons practicing cosmetology upon members of their immediate families.
3. Services by persons authorized under the laws of this state to practice medicine, surgery, dentistry, podiatry, osteopathy, or chiropractic.
4. Services by ~~barbers~~, nurses, undertakers, and morticians lawfully engaged in the performance of the usual and ordinary duties of their vocation; or by a licensed cosmetologist engaged in manicuring the nails of any person in a licensed barbershop.
5. Educational activities conducted in connection with any regularly scheduled meeting or any educational activities of any bona fide association of licensed cosmetologists, from which the general public is excluded. For purposes of this subsection a "bona fide association of cosmetologists" shall mean any organization whose constitution, bylaws, or membership rules establish within said organization a class of membership consisting of licensed cosmetologists.

SECTION 4. AMENDMENT. Section 43-11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-03. ~~State board of hairdressers and cosmetologists~~ cosmetology - Appointment - Term. The state board of ~~hairdressers and cosmetologists shall consist~~ cosmetology consists of three members appointed by the governor for three years each, with their terms of office so arranged that one term ~~only shall expire~~ expires on June thirtieth of each year. Each member of the board shall qualify by taking the oath required of civil officers and shall hold ~~her~~ office until ~~her~~ a successor is appointed and qualified. A vacancy on the board shall be filled by appointment by the governor for the unexpired term.

SECTION 5. AMENDMENT. Section 43-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-04. **Members of board - Qualifications.** Each member of the board shall be a citizen of this state and a licensed ~~hairstresser or~~ a cosmetologist who has had at least three years practical experience in ~~her~~ the occupation. No two members of the board shall be members of or affiliated with any school ~~teaching hairstressing or~~ of cosmetology, nor shall any two members of the board be graduates of the same school of ~~hairstressers or eesmeteologists~~ cosmetology.

SECTION 6. AMENDMENT. Section 43-11-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-05. **Officers of board - Powers - Rulemaking.** The members of the board annually shall elect a president and a secretary from ~~their own number~~ the members of the board. The president and the secretary may administer oaths. The board may adopt rules necessary to implement this chapter.

SECTION 7. AMENDMENT. Section 43-11-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-06. **Compensation of members of board - How paid.** Each member of the board ~~shall~~ is entitled to receive ~~thirty-five dollars~~ compensation of fifty dollars for each day employed in the actual discharge of official duties and necessary expenses so incurred, as determined by the board. The secretary of the board shall receive an annual salary of not more than ~~seven thirteen thousand eight hundred~~ dollars to be fixed by the board, and necessary expenses actually incurred in the performance of official duties. Expenses incurred by a board member in the performance of an official function are payable by the board pursuant to sections 44-08-04 and 54-06-09. The compensation and expenses of all members of the board shall be paid from the ~~fund in the state treasury to the use of the board on requisition signed by the president and the secretary~~ license fees and other sources of income of the board and the warrant of the state auditor.

SECTION 8. AMENDMENT. Section 43-11-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-07. **Bond of secretary.** Before entering upon the discharge of ~~the duties of her office,~~ the secretary of the board shall be bonded for the faithful discharge of ~~her~~ duties in the ~~penal sum~~ amount of five thousand dollars, and the premium for ~~sueh~~ such the bond shall be paid ~~from the state hairstressers' fund out of the funds~~ received by the board. The bond and oath of office ~~endorsed thereon~~ shall must be deposited with the secretary of state and kept in ~~his~~ office.

SECTION 9. AMENDMENT. Section 43-11-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-08. Meetings of the board --Quorum---Rules---Seal. The board shall meet twice each year in the capitol of the state on the second on the third Tuesday in January and July and at such other times and places as the board may direct. The majority of the members of the board shall constitute a quorum for the transaction of business. The board shall prescribe rules for its government and have a seal with which to authenticate its acts. The board may meet at such other times and places as is necessary to conduct the official business of the board.

SECTION 10. AMENDMENT. Section 43-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-10. Records of board - Fees - Expenses - How paid. The secretary of the board shall keep a record of its the board's proceedings and a register of applicants for certificates licensure showing the name of the applicant, the name and location of her the applicant's place of occupation or business, and whether the applicant was granted or refused a certificate license. The books and records of the board shall be prima facie evidence of matters therein contained and shall constitute public records. All fees and payments required to be paid by applicants for examinations or licenses must be deposited with the secretary of the board. The secretary shall pay all expenses incurred in the operation of maintaining an office for the purpose of carrying out this chapter from fees and other income.

SECTION 11. AMENDMENT. Section 43-11-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-11. Sanitary rules - Practice outside salon. The board, with the approval of the state department of health, shall adopt these sanitary rules it deems necessary to prevent the creating and spreading of infectious and contagious diseases. The board shall adopt other rules consistent with and necessary to carry out the provisions of this chapter. A hairdressing or cosmetician shop shall cosmetology salon must be at a fixed location and must be separate from all other businesses and establishments and shall may not be used for living or sleeping quarters. An operator may practice outside of the establishment under the direction and control of an owner or manager thereof under rules promulgated adopted by the board.

SECTION 12. AMENDMENT. Section 43-11-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-12. Persons called to aid of board. The board may call to its aid employ or receive services from any person of established reputation and known ability knowledgeable in hairdressing and cosmetology for the purpose of conducting examinations, inspections, and investigations of any or all persons, firms, or corporations affected regulated by this chapter. The person shall not be

connected with any school teaching any of the occupations under this chapter. Any person called employed by the board to its aid shall be entitled to receive for these services not more than thirty-five fifty dollars for each day employed in the actual discharge of official duties, and actual and necessary expenses to be paid in the same manner as the compensation and expenses of members of the board are paid in the amounts payable under sections 44-08-04 and 54-06-09.

SECTION 13. AMENDMENT. Section 43-11-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-13. Certificate of registration License required. No person in this state shall engage in, follow, or attempt to engage in or follow the occupation of a hairdresser or cosmetologist cosmetology, nor conduct a hairdressing or cosmetologist establishment cosmetology salon or school of cosmetology, unless she having first has obtained a certificate of registration license.

SECTION 14. AMENDMENT. Section 43-11-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-14. Certificates Licenses - Board to issue - Form - Displayed. The board shall may issue all certificates, including these of operators, instructors, and manager-operators licenses provided for in this chapter. Each certificate license issued shall must be signed by the president and the secretary of the board and attested by the seal of said the board. A certificate shall be license is evidence that the person to whom it is issued is entitled to follow all of the practices or occupations referred to therein in the license. A certificate shall license must be displayed conspicuously in the principal office, place of business, or place of employment of the certificate holder licenseholder.

SECTION 15. AMENDMENT. Section 43-11-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-15. Who may operate and own a hairdressing or cosmetologist shop Cosmetology salon ownership and operation. A hairdressing or cosmetologist shop cosmetology salon may be owned, operated, conducted, and managed by a licensed manager-operator or any other person if she does not instruct in or practice hairdressing or cosmetology but employs one or more manager-operators in the shop to operate, conduct, and manage the same by any person authorized to do business in this state. A cosmetology salon must be operated and supervised by a manager-operator.

SECTION 16. AMENDMENT. Section 43-11-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-16. Registered schools Schools of cosmetology - Qualifications for registration licensure. A certificate of registration license shall be granted to a school for hairdressers

and ~~cosmetologists~~ of cosmetology upon an application to the board and the payment of the annual registration license fee, if the school:

1. Is operated and maintained in premises entirely distinct and permanently separated separate from any hairdressing, beauty, or cosmetologist shop cosmetology salon;
2. Requires one thousand eight hundred hours of training and instruction in cosmetology not to exceed eight hours per day;
3. ~~Repealed by S.B. 1975, ch. 402, § 3,~~
4. Employs at least two full-time licensed instructors for the first twenty-five students enrolled and one additional instructor for each additional twenty-five students enrolled or fraction thereof after such the school's enrollment has reached fifty students;
- 5- 4. Possesses apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum;
- 6- 5. ~~Keeps~~ Maintains a daily record of the attendance and performance of each student ~~which shall not be in excess of eight hours per day~~;
- 7- 6. Maintains regular class and instruction hours to include practical demonstrations and theoretical studies supplemented by audiovisual aids, and studies in sanitation, sterilization, and other safety measures and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to cosmetology ~~or any practice thereof as provided in this chapter~~;
- 8- 7. Agrees not to:
 - a. Conduct a clinical department for fees after registration licensure by the board, until such the school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter;
 - b. Permit any student to practice on any person not an instructor or registered student of such the school until such the student has completed at least twenty percent of the total hours of instruction required by this chapter;
 - c. Compensate any of its basic students in any way; and

9- 8. At the time of application for its license licensure and upon the renewal of such a license, furnishes to the board, and maintains in force at all times the license is in effect, a bond in the penal sum of ten thousand dollars. Such The bond shall run in favor of the board, as agent of the state, and shall be furnished by a surety company authorized to do business in this state. It shall be conditioned upon such the bonded school's providing its registered students with the full course of instruction required under the provisions of this chapter and shall provide for a refund of a proportionate amount of each student's tuition fee upon default.

Any such school that ~~shall enroll~~ enrolls student instructors shall set up an adequate course of training as such, with the approval of the board, and shall not have at any one time more than one such student instructor for each licensed instructor actively engaged in such the school.

SECTION 17. AMENDMENT. Section 43-11-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-17. Certificate of registration Licenses issued for schools of hairdressing, cosmetology, and shops cosmetology salons - Fee for annual registration. The board may issue an annual certificate of registration license for a school giving instruction in hairdressing and of cosmetology. The annual registration fee for a school shall be determined annually by the board, but shall not exceed the sum of one hundred dollars as set forth in section 43-11-28. The board shall, after inspection and approval, issue a shop registration certificate salon license, the annual fee for which shall be determined annually by the board, but shall not exceed fifty dollars for new registrations and twenty-five dollars for shops previously registered as set forth in section 43-11-28.

SECTION 18. AMENDMENT. Section 43-11-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-18. School advertising must disclose work done by students - Violation - Certificate eanceled Cancellation of license. No person, firm, or corporation operating or conducting a school of hairdressing and cosmetology under a certificate of registration, shall may advertise, in any manner whatsoever, to perform any of the practices referred to in this chapter of cosmetology without disclosing that the practice offered is to be performed by students under the supervision of a licensed instructor. If any school violates this section, the board, after notice and hearing and a determination of the violation, shall cancel the certificate license granted to the school.

SECTION 19. AMENDMENT. Section 43-11-19 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-19. Students - Registration. A student hairdresser and cosmetologist shall be registered with the board, but to be registered as a student one shall have the following qualifications must:

1. Be at least seventeen years of age-;
2. Be of good moral character-;
3. Have educational qualifications equivalent to completion of two years of high school-; and
4. Have matriculated enrolled in a registered school of cosmetology and complied with the preliminary requirements thereof.

The names and qualifications of all students shall be certified to the board by each registered school of cosmetology. The certification of the names and qualifications of the students registered at each school shall must be accompanied by a processing fee for each student in an amount as may be fixed by the board, not to exceed five dollars under section 43-11-28.

SECTION 20. AMENDMENT. Section 43-11-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-20. Student operator---When she may practice. A student registered certified under the provisions of this chapter, while attending a hairdressing and cosmetologist school of cosmetology, may assist in any of the practices of a hairdresser or cosmetologist cosmetology if under the immediate direction and supervision of a licensed instructor.

SECTION 21. AMENDMENT. Section 43-11-20.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-20.1. Refund of student tuition fees upon cancellation of course. Schools of hairdressing and cosmetology shall refund tuition and other charges paid by or on behalf of a student when written notice of cancellation is given by the student. Refunds shall be made in accordance with the following schedule:

- 1- When notice is received prior to or within seven days after completion of the first day of instruction, all tuition and other charges except twenty-five dollars shall be refunded to the student.
- 2- When notice is received within thirty days after completion of the first day of instruction, or prior to the completion of one-fourth of the course, all tuition and other charges except twenty-five percent thereof shall be refunded to the student.

- 3- When notice is received upon or after completion of one-fourth of the course, but prior to the completion of one-half of the course, all tuition and other charges except fifty percent thereof shall be refunded to the student.
- 4- When notice is received upon or after the completion of fifty percent of the course, no tuition or other charges shall be refunded to the student.

<u>Term Completed</u>	<u>Tuition Retained By School</u>
0.0% - 4.9%	20%
5% - 9.9%	30%
10% - 14.9%	40%
15% - 24.9%	45%
25% - 49.9%	70%
Over 50%	100%

Notice of the provisions of this section, and of the provisions of sections 43-11-20.2 and 43-11-20.3, shall be posted in a conspicuous place in each school of hairdressing and cosmetology. The notice shall be in such a form and shall contain such information as shall be prescribed by the board. The board shall take such action as may be necessary to enforce the provisions of this section and sections 43-11-20.2 and 43-11-20.3, including revocation of the certificate of registration license issued pursuant to section 43-11-17. The provisions of this section shall does not prejudice the right of any student to recovery in an commence a civil action against any school of hairdressing and cosmetology for breach of contract or fraud.

SECTION 22. AMENDMENT. Section 43-11-20.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-20.2. Negotiation of promissory instruments. No school of hairdressing and cosmetology shall negotiate any promissory instrument received as payment for tuition or other charges prior to the completion of one-half of the course of instruction offered by the school.

SECTION 23. AMENDMENT. Section 43-11-20.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-20.3. Cancellation of contract for instruction. Any person shall have the unrestricted right to rescind, revoke, or cancel a contract for a course of instruction at any school of hairdressing and cosmetology after entering into such the contract without incurring any tort or contract liability. In such event, the school of hairdressing and cosmetology may retain the amount of tuition and other charges as set forth in section 43-11-20-1-

SECTION 24. AMENDMENT. Section 42-11-20.4 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-20.4. Exemption from postsecondary license requirement - Solicitor's permit required. Schools of hairdressing and cosmetology licensed under the provisions of this chapter shall be exempt from the license requirement of chapter 15-20.4, but all. All persons who solicit business for a school of hairdressing and cosmetology, or who sell any course or courses of instruction, shall secure a solicitor's permit and bond as required by chapter 15-20.4 in an amount and under conditions as established by the board.

SECTION 25. AMENDMENT. Section 43-11-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-21. Operator's license - Examination required - Application - Examination - Fee Fees. Each person who desires to secure an operator's certificate of registration license shall file with the secretary of the board a written application under oath on a form prescribed and supplied by the board. The application shall be accompanied by the following:

1. A health certificate issued by a regularly licensed physician;
2. Satisfactory proof of the educational and moral qualifications required of a student;
3. An examination fee and kit rental fee as may be fixed by the board not to exceed twenty dollars, pursuant to section 43-11-28;
4. Satisfactory proof that the applicant has completed the required training in a registered school which shall not be less than one thousand eight hundred hours for hairdressers and cosmetologists of cosmetology; and
5. A fee for original licensure as required by section 43-11-28.

SECTION 26. AMENDMENT. Section 43-11-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-22. Board to determine qualifications of applicants - Delegation of power. The sufficiency of the qualifications of applicants for admission to examination for hairdressers and cosmetologists, for registration as such, and for license certification or licensure to practice hairdressing and cosmetology under this chapter shall be determined by the board but it may delegate such authority to the secretary, subject to such provision as the board may make for appeal to it. The board may delegate authority under this section to the secretary.

SECTION 27. AMENDMENT. Section 43-11-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-23. Examination. The examination of applicants for certificates license to practice under this chapter shall be conducted under rules prescribed by the board and shall include both practical demonstrations and written or oral tests in reference to the practices for which a certificate license is desired and in reference to such related studies or subjects as the board may determine necessary for the proper and efficient performance of such practices a practice. The examination shall not be confined to any specific system or method and shall be consistent with the practical and theoretical requirements of hairdressers and esmetologists cosmetology.

SECTION 28. AMENDMENT. Section 43-11-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-24. Operator's certificate license - When issued - Failure to pass examination - Reexamination - Retraining. An operator's certificate license shall be issued to any person who has:

1. Complied with the provisions of section 43-11-21; and
2. Passed to the satisfaction of the board, the examination of applicants for a certificate license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee shall not be returned, but within. Within one year after such failing to pass an examination, the applicant may be examined again with the payment of an additional examination a reexamination fee and kit rental fee as may be fixed by the board, not to exceed twenty dollars set forth in section 43-11-28. Anyone who fails to pass the reexamination must complete an additional one hundred sixty hours of training at a school of cosmetology prior to reapplying for examination.

SECTION 29. AMENDMENT. Section 43-11-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-25. Certificate License issued without examination - Conditions. The board may dispense with the examination of applicants for certificates licenses to practice hairdressing and cosmetology and may grant certificates of registration licenses upon the payment of a fee as may be fixed by the board, not to exceed forty dollars, for original licensure and the reciprocity fee provided in section 43-11-28 if:

1. The applicant has complied with the requirements for registration of the District of Columbia, or another state, territory, foreign country, or province where the

requirements are equal substantially to those in force in this state at the time the application for the certificate license is filed; or and

2. Due proof is furnished that for at least three years immediately prior to the application the applicant has practiced continuously the occupation for which a certificate is desired in the District of Columbia, or another state, territory, foreign country, or province. The applicant passes to the satisfaction of the board an examination on sanitary practices and cosmetology law in this state.

SECTION 30. AMENDMENT. Section 43-11-26 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-26. Manager-operator - License - Qualifications. A person may obtain a manager-operator's license if she complies with all of the following requirements upon:

1. Furnishes Furnishing to the board evidence of-
 - a- Having being at least eighteen years of age and having practiced as a licensed operator in this state for at least two hundred fifty days; and
 - b- Having attained the age of eighteen years one hundred twenty-five days.
2. Pays a fee as may be fixed by the board, not to exceed twenty dollars. Paying an original licensure fee and examination fee as set forth in section 43-11-28;
3. Passing an examination conducted by the board to determine fitness to practice as a manager-operator; and
4. Complies with the other requirements of this chapter applicable to a manager-operator.

SECTION 31. AMENDMENT. Section 43-11-27 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-27. Instructor's license - Student instructor's license - Demonstrator's license - Registration - Qualifications.

1. No person may be licensed as an instructor in any practice; or any combination of the practices, of cosmetology unless the person shall furnish furnishes the board the examination fee set forth in section 43-11-28 and evidence of having attained the age of eighteen years and having a general education equivalent to the completion of four years in high school and shall pay the

examination fee as fixed by the board, not to exceed twenty dollars and shall hold a license as a cosmetologist issued pursuant to section 43-11-21, and in addition. An applicant:

- a. Shall have at least nine hundred sixty hours teacher's instructor's training in cosmetology in a registered school of cosmetology. In no event shall more than one thousand one hundred hours teacher's instructor's training be required for admission to examination; or
 - b. Shall have at least one year's experience as an active practicing cosmetologist, supplemented by not less than four hundred eighty hours teacher's instructor's training in cosmetology in a registered school of cosmetology. In no event shall more than six hundred hours teacher's instructor's training be requisite for admission for examination under this subdivision; or
 - c. Shall possess a current North Dakota license as a cosmetologist and shall have been actively engaged in the practice of cosmetology for at least three years prior to application for an instructor's license supplemented by not less than one hundred sixty hours teacher's instructor's training in cosmetology in a registered school of cosmetology. In no event shall more than six hundred hours teacher's instructor's training be requisite for admission for examination under this subdivision. No instructor or student instructor shall be permitted to practice cosmetology on a patron other than that part of practical work which shall pertain directly to the teaching of practical operations to students.
2. Student instructors in cosmetology shall be registered upon enrollment in a registered school of cosmetology and upon certification by the school to the board of the name, age, and qualifications of the student instructor which shall be recorded in a register kept for that purpose. A student instructor shall, at the time of enrollment, possess a general education equivalent to the completion of four years in high school and hold a license as a cosmetologist. Upon completion of the course prescribed for student instructors, the student instructor shall make application on a form provided by the board and pay a fee of twenty dollars as provided in section 43-11-28. The board shall thereupon cause the applicant to be examined for an instructor's certificate license. The examination shall be given by a special examining committee comprised of the board, assisted by one person designated by the board; who shall possess at least possessing the minimum qualifications entitling him the person to instruct in an institution of higher learning and who shall examine the applicant in teaching procedures only. Upon successfully

passing the examination the board shall issue an instructor's certificate license to the applicant.

- 3. No person may be licensed as a demonstrator unless the person is a licensed cosmetologist or shall file proof with the board of continuously practicing in another state as a cosmetologist for a period of at least two years prior to the date of the application for license as a demonstrator and shall pay an original license fee of fifteen dollars as set forth in section 43-11-28.
- 4. No person shall be entitled to renew an instructor's certificate after December 31, 1973, license unless such person shall furnish the instructor has furnished to the board evidence that she has attended of attendance at an approved seminar pursuant to requirements prescribed by the board.

SECTION 32. AMENDMENT. Section 43-11-28 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-28. Renewal of certificate---Fee Fees. The certificate of registration issued by the board under the provisions of this chapter shall be valid for one year and shall be renewed by the board on or before the thirty-first day of December of each year upon the payment of the annual renewal fee, which shall be-

- 1- For operators, not more than ten dollars-
- 2- For manager-operators, not more than fifteen dollars-
- 3- For instructors, not more than fifteen dollars-
- 4- For demonstrators, not more than ten dollars-

1. Fees to be paid by applicants for original registrations, original licenses, annual renewals, licenses issued upon reciprocity, and examinations as required under this chapter may not exceed the following amounts:

a. Original registrations, licenses, and annual renewals:	MAXIMUM FEE:
(1) Cosmetology salons, original registration	\$ 75.00
(2) Cosmetology salons, annual renewal	\$ 25.00
(3) School of cosmetology, original registration	\$500.00
(4) School of cosmetology, annual renewal	\$200.00
(5) Operator, original license	\$ 10.00
(6) Operator, annual renewal	\$ 10.00
(7) Manager-operator, original license	\$ 20.00
(8) Manager-operator, annual renewal	\$ 15.00
(9) Instructor, original license	\$ 30.00
(10) Instructor, annual renewal	\$ 15.00

(11)	Demonstrators, original license	\$ 25.00
(12)	Demonstrators, annual renewal	\$ 15.00
(13)	Reciprocity license fee	\$100.00
(14)	Registration fee for student instructor	\$ 10.00
(15)	Duplicate license	\$ 5.00
(16)	Penalty fee for late renewal	\$ 10.00
(17)	Certification fee	\$ 15.00

b. Examinations:

(1)	Operator	\$ 20.00
(2)	Operator's kit rental fee	\$ 45.00
(3)	Manager-operator	\$ 20.00
(4)	Instructors	\$ 50.00
(5)	Instructor's kit rental fee	\$100.00
(6)	Reexamination fee, operator's	
	(a) Practical	\$ 25.00
	(b) Written	\$ 15.00
(7)	Reexamination fee, manager-operator	\$ 20.00
(8)	Reexamination fee, instructors	
	(a) Practical	\$ 50.00
	(b) Written	\$ 20.00

2. Fees are not prorated or returnable. The board may charge a ten dollar penalty for license renewal applications received after December thirty-first. The board may reduce a renewal fee from the maximum amount only if it applies an equal percentage of reduction to all renewal fees. The board shall sponsor an educational program for certificate holders licenseholders to carry out the purposes of protecting the public health and safety and maintaining capable and skilled operators, manager-operators, and instructors. The board is directed to use such portion of the renewal fees as the board may determine for the purpose of providing the educational program.

SECTION 33. AMENDMENT. Section 43-11-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-29. Failure to renew certificate license at end of year - When it may be renewed. A certificate of registration license issued by the board under the provisions of this chapter, which has not been renewed prior to the thirty-first day of December in any year, shall expire on the thirty-first day of December in that year. The holder of an expired certificate license, within one year from and after the date of its expiration, may obtain a certificate license upon the payment of a the required fee of five dollars in addition to the current renewal fee and upon furnishing to the board satisfactory proof of her the person's qualifications to resume practice. If a certificate license is not renewed within one year from the date it expired, the applicant for reinstatement shall take and pass the examination that is required of new applicants.

SECTION 34. AMENDMENT. Section 43-11-30 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-30. Revocation or suspension of certificate license. The board may revoke and suspend ~~certificates of registration a license~~ upon proof of the violation of the provisions of this chapter or rules ~~promulgated~~ adopted by the board.

SECTION 35. AMENDMENT. Section 43-11-31 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-31. Certificate of registration License - Refusal to grant - Grounds. The board may refuse to grant a certificate of registration license which may be issued under the provisions of this chapter to any person who:

1. Is guilty of fraud in passing the examination;
2. Is guilty of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a ~~hairstresser~~ or cosmetologist, or who, following conviction of any offense, the board determines is not sufficiently rehabilitated under section 12.1-33-02.1;
3. Is guilty of grossly unprofessional or dishonest conduct;
4. Is addicted to the use of intoxicating liquor or drugs to such an extent as to render her unfit to practice ~~hairstressing and~~ cosmetology;
5. Advertises by means of knowingly false or deceptive statements;
6. Fails to display the certificate license as provided in this chapter; or
7. Violates the provisions of this chapter or the rules ~~promulgated~~ adopted by the board.

SECTION 36. AMENDMENT. Section 43-11-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-33. Hearings - Board may subpoena witnesses - Fees - How paid. The board may require the attendance of witnesses and the production of ~~such~~ books, records, and papers ~~as it may desire~~ at any hearing or with reference to any matter which it has authority to investigate, and for that purpose may require the secretary to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers. The subpoena shall be directed to the sheriff of the county where the witness resides or is found, and shall be served and returned in the same manner as a subpoena in a criminal case ~~is served and returned~~. The fees and

mileage of the sheriff and witnesses shall be the same as may be allowed in the court in criminal cases. Fees and mileage ~~shall~~ must be paid ~~from the state hairdressers' fund~~ in the same manner as ~~other~~ expenses of the said board are paid.

SECTION 37. AMENDMENT. Section 43-11-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-34. Appeal from actions of the board. An appeal may be taken from an action of the board under this chapter in refusing to grant, or in suspending or revoking a ~~certificcate~~ license, to the district court of the county ~~in which of residence of~~ the person who has been refused a ~~certificcate~~ license or whose ~~certificcate~~ license has been suspended or revoked ~~resides~~.

SECTION 38. AMENDMENT. Section 43-11-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-35. Penalty. Any person who, without a ~~certificcate~~ license, shall practice any of the occupations, maintain a school, or act in any capacity, wherein a ~~certificcate~~ license is required by ~~the provisions of~~ this chapter, ~~shall be~~ is guilty of a class B misdemeanor.

Approved March 27, 1985

CHAPTER 478

HOUSE BILL NO. 1346
(Representative Moore)
(Senator Peterson)

OPTOMETRISTS CONTINUING EDUCATION

AN ACT to amend and reenact sections 43-13-17 and 43-13-20 of the North Dakota Century Code, relating to education and continuing education requirements for optometrists.

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

SECTION 1. AMENDMENT. Section 43-13-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-17. Application for examination - Contents - Educational requirements - Fee for examination. Any person desiring to take the examination for a certificate of registration to practice optometry in this state shall file with the secretary of the board, at least five days before the date of the examination, a written application for examination. The application shall be accompanied by the affidavits of two freeholders of this state to the effect that the applicant is of good moral character. The applicant also shall furnish satisfactory proof that he:

1. Is at least eighteen years of age;
2. Has attended high school for four years or has the equivalent of such an education; and
3. Is a graduate of a class "A" an optometry school or college accredited by the council on optometric education of the American optometric association.

Before beginning the examination, the applicant shall pay to the secretary of the board the sum of forty dollars.

SECTION 2. AMENDMENT. Section 43-13-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-20. Term of certificate - Renewal - Annual license fee - Continuing educational requirements. A certificate of registration to practice optometry in the state shall be issued for one year only, but may be

renewed by paying to the secretary of the board, during the month of January of each year, the license fee for that year, and as of January 1, 1974, by submitting satisfactory proof to the board that within the preceding three-year period the applicant has attended optometric educational programs as required by the board. The board shall grant an applicant an additional year in which to attend such education programs if an applicant furnishes the board with sufficient proof that he has been unable to attend such education programs during a year, which proof shall include a physician's certificate stating that the applicant was ill and that it would have been hazardous to the applicant's health to attend such educational programs. The license fee for each year shall be determined annually by the North Dakota state board of optometry and shall not exceed one hundred dollars. The board shall adopt reasonable rules and regulations which shall state the type of optometric educational programs which are approved. The board shall also designate the number of classroom hours which must be attended, which shall not exceed ~~eighteen~~ thirty-six within each three-year period. Any person who does not meet these requirements by February first of the year in which the license fee becomes due and payable shall be in default and may be reinstated by the board upon the payment of an additional sum of twenty-five dollars, and upon the acceptance by the board of satisfactory evidence that the person has sufficiently attended approved optometric educational programs, and upon the compliance with other reasonable conditions the board may impose. Nothing contained herein shall require an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

Approved March 14, 1985

CHAPTER 479

HOUSE BILL NO. 1181
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

BOARD OF PHARMACY POWERS

AN ACT to create and enact three new subsections to section 43-15-10 of the North Dakota Century Code, relating to the powers of the board of pharmacy.

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

SECTION 1. Three new subsections to section 43-15-10 of the 1983 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

The board or its authorized representatives may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-15, chapter 19-02.1 that pertain to drugs, chapter 19-03.1, or of the rules of the board.

In addition to other remedies, the board may apply to the district court in the jurisdiction of an alleged violation, and that court has jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of chapter 43-15, chapter 19-02.1 pertaining to drugs, and chapter 19-03.1, whether or not there exists an adequate remedy at law. Whenever a duly authorized representative of the board finds or has probable cause to believe that any drug or device is adulterated, misbranded, mislabeled, or improperly identified, within the meaning of chapter 19-02.1, the representative shall affix to that drug or device a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated, misbranded, mislabeled, or improperly identified, has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board, its agents or the court. No person shall remove or dispose of such

embargoed drug or device by sale or otherwise without the permission of the board or its agent, or, after summary proceedings have been instituted, without permission from the court.

When a drug or device detained or embargoed has been declared by such representative to be adulterated, misbranded, mislabeled, or improperly identified, the board shall, as soon as practical thereafter, petition the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated, misbranded, mislabeled, or improperly identified, the board shall direct the immediate removal of the tag or other marking. If the court finds the detained or embargoed drug or device is adulterated, misbranded, mislabeled, or improperly identified, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage and other proper expense shall be borne by the owner of such drug or device. When the adulteration, misbranding, mislabeling, or improper identification, can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been posted, may direct that such drug or device be delivered to the owner for labeling or processing under the supervision of a board representative. Expense of supervision shall be paid by the owner. Bond posted shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid. Nothing in this section shall be construed to require the board to report violations whenever the board believes the public's interest will be adequately served in the circumstances by a suitable written notice or warning.

Approved March 14, 1985

CHAPTER 480

HOUSE BILL NO. 1164
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

PHARMACISTS CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to continuing pharmaceutical education.

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

SECTION 1. A new section to chapter 43-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuing pharmaceutical education.

1. Findings and declarations. The legislative assembly makes the following findings and declarations:
 - a. Because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain professional competency and improve professional skills.
 - b. To assure the continued competency of the pharmacist and to maintain uniform qualifications for registration and licensure in the profession for the protection of the health and welfare of its citizens, the legislative assembly of North Dakota deems it in the public interest to adopt a continuous professional education program.
2. Renewal certification. Commencing March 1, 1987, no annual renewal of a certificate of registration shall be issued to a pharmacist until such pharmacist has satisfactorily completed an accredited program of continuing professional education, all of which may be home self-study, during the previous two years to help assure the pharmacist's continued competence to engage in

the practice of pharmacy. The board from time to time shall determine the amount of continuing education to be required, not to exceed thirty hours in each biennium period. Upon request of the board, proof of compliance shall be furnished to the board.

3. Rules. The board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section, which shall include the methods of determining accredited programs, methods of determining compliancy, any fees, and such other rules consistent with this section as the board shall determine. This section and all rules adopted hereunder shall be uniformly applied by the board.

Approved March 14, 1985

CHAPTER 481

HOUSE BILL NO. 1284
(Rydell)

PHYSICIANS LICENSE QUALIFICATIONS

AN ACT to amend and reenact section 43-17-18 of the North Dakota Century Code, relating to qualifications of an applicant for a license to practice medicine.

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

SECTION 1. AMENDMENT. Section 43-17-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-18. Qualifications of applicant for examination. An applicant for a license to practice medicine shall present evidence satisfactory to the board ~~that he has~~ of the following qualifications:

1. ~~That he~~ The applicant is at least eighteen years of age.
2. ~~That he~~ The applicant is a graduate of ~~some~~ a reputable medical or osteopathic college approved by the board.
3. ~~That he~~ The applicant has satisfactorily completed a one-year ~~internship~~ residency in a hospital approved by the board, or, at the discretion of the board ~~that he~~ has completed ~~such other~~ postgraduate training or ~~such~~ approved hospital residency training, ~~or any combination thereof,~~ as the board deems equivalent ~~thereto~~ to the residency.
4. An applicant who is a graduate of a medical or osteopathic school located outside the United States must have a certificate issued by the educational council for foreign medical graduates and must pass an examination or examinations given or approved by the board to establish proficiency in writing and speaking English. If the foreign medical or osteopathic school is not approved by the board, the successful completion of three years of residency training in an approved hospital and a passing grade on the federation of state medical boards of the United States licensing examination are required of the

applicant in lieu of approval by the board of the medical or osteopathic college from which the applicant graduated.

Approved March 27, 1985

CHAPTER 482

HOUSE BILL NO. 1104
(Shaw)

PHYSICIAN LICENSE SUSPENSION

AN ACT to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to the authority of the board of medical examiners to suspend a physician's license for up to sixty days in an ex parte proceeding based on a finding of immediate and present danger of harm to the public.

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

SECTION 1. A new section to chapter 43-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Temporary suspension - Appeal.

1. Where the board has verified evidence that probable cause requires the suspension of a physician's license and where harm to the public is so imminent and critical that substantial harm would likely result if the physician's license is not suspended prior to a hearing, the board may order a temporary suspension ex parte.
2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board must set the date of a full hearing for suspension or revocation of the physician's license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether probable cause reasonably requires the temporary suspension to adequately protect the public interest. The court shall give priority to the appeal for prompt disposition thereof.

Approved March 27, 1985

CHAPTER 483

SENATE BILL NO. 2185
(W. Meyer)

PHYSICIAN LICENSE REINSTATEMENT

AN ACT to amend and reenact section 43-17-30 of the North Dakota Century Code, relating to reinstatement of physicians delinquent in the payment of registration fees.

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

SECTION 1. AMENDMENT. Section 43-17-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-30. Payment of delinquent registration fee - Reinstatement. Any practitioner of medicine and surgery who has been licensed to practice in this state by the board, and who has been suspended from practice and ~~has had his~~ whose license has been revoked because of ~~his~~ failure to pay the annual registration fee, shall may, at the discretion of the board, be reinstated, ~~his~~ and have the suspension revoked, and ~~his~~ the license renewed by ~~his~~ paying to the secretary-treasurer of the board the amount of the registration fee ~~in~~ which ~~he~~ is then in default.

Approved March 22, 1985

CHAPTER 484

HOUSE BILL NO. 1536
(Unhjem)

DENTAL HYGIENISTS LICENSURE

AN ACT to create and enact a new section to chapter 43-20 of the North Dakota Century Code, relating to notice for address changes of dental hygienists; and to amend and reenact sections 43-20-06, 43-20-07, 43-20-10, and 43-20-12 of the North Dakota Century Code, relating to fees, reciprocity, board member compensation, and dental auxiliary supervision.

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

SECTION 1. AMENDMENT. Section 43-20-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 payment, the board, upon ~~twenty~~ thirty days' notice, may revoke or suspend the license of the hygienist in default. The payment of such fee within such ~~twenty-day~~ thirty-day period, with an additional sum of fifteen dollars, shall excuse the default. The board may collect such fee by suit. Such licensed hygienist must display conspicuously at the place of his employment his the annual registration license.

SECTION 2. AMENDMENT. Section 43-20-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 ~~he~~ the dental hygienist is licensed, certifying to the fact of his 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 state, certifying that ~~he~~ the dental hygienist is of good moral

character and professional attainments, may upon the payment of a fee of forty dollars, in the discretion of the board, and upon the satisfactory passing of such examinations as the said board shall deem 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 grants reciprocity to dental hygienists licensed in the has a reciprocal agreement with this state of North Dakota.

SECTION 3. AMENDMENT. Section 43-20-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-10. State board of dental examiners - Authority - Duty --Compensation. The North Dakota state board of dental examiners shall have the power and it shall be its duty to enforce the provisions of this chapter. The board shall have the power to make such rules and regulations, not inconsistent with this chapter, as may, in its judgment, be necessary for the proper enforcement of this chapter, and the examination of dental hygienists for their conduct and practice. Each member of the board shall receive as compensation for his services hereunder, the sum of five dollars for each applicant examined, and such compensation shall be in addition to any compensation received under the provisions of chapter 43-28.

SECTION 4. AMENDMENT. Section 43-20-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-20-12. Dental hygienists - Auxiliary personnel - Distinction.

1. A legally licensed and registered dentist may delegate to competent dental auxiliary personnel those procedures over which the dentist exercises direct supervision and full responsibility, except those procedures which require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of an any appliance which, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury.
2. Except as provided in this subsection, dental auxiliary personnel may perform delegated procedures only under direct supervision of a dentist licensed in this state. The board of dental examiners may, where the board finds it appropriate, authorize the performance of delegated procedures under indirect or general supervision in hospitals, long-term care facilities, and state institutions upon application by a dentist licensed in this state. Any authority granted under this subsection is valid for one year, and upon application by a licensed dentist for renewal of the authority, must be reviewed in full by the board prior to the granting of renewal of the authority.

SECTION 5. A new section to chapter 43-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

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.

Approved March 31, 1985

CHAPTER 485

HOUSE BILL NO. 1183
(Committee on Industry, Business and Labor)
(At the request of the Real Estate Commission)

REAL ESTATE BROKERS AND SALESMEN CONTINUING EDUCATION

AN ACT to amend and reenact section 43-23-08.2 of the North Dakota Century Code, relating to continuing education requirements for North Dakota real estate brokers and salesmen.

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

SECTION 1. AMENDMENT. Section 43-23-08.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 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.

Approved March 14, 1985

CHAPTER 486

SENATE BILL NO. 2378
(Senator Peterson)
(Representative Moore)

WATCHMAKER REGULATION

AN ACT to repeal chapter 43-27 of the North Dakota Century Code, relating to the board of examiners in watchmaking and the regulation of watchmakers.

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

SECTION 1. REPEAL. Chapter 43-27 of the North Dakota Century Code is hereby repealed.

Approved March 22, 1985

CHAPTER 487

HOUSE BILL NO. 1537
(Unhjem)

DENTISTS LICENSURE

AN ACT to amend and reenact subsection 5 of section 43-28-06, and sections 43-28-11, 43-28-12, 43-28-12.1, 43-28-14, 43-28-16, 43-28-17, 43-28-20, 43-28-21, and 43-28-23 of the North Dakota Century Code, relating to powers of the state board of dental examiners, and to applications, examinations, fees, admissions, disciplinary actions, and costs.

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

SECTION 1. AMENDMENT. Subsection 5 of section 43-28-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. To employ and compensate attorneys, investigative staff, and clerical assistants and to perform such other duties as are imposed upon the board by this chapter.

SECTION 2. AMENDMENT. Section 43-28-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 to the secretary-treasurer of the board on such forms as it may provide and shall submit to an examination by the board. The application shall be verified under oath to the effect that all of the statements contained therein are true of applicant's own knowledge, and must be received by the secretary-treasurer of the board at least thirty days prior to the date of the examination. ~~Applicant~~ The applicant shall enclose with ~~his~~ the application a recent autographed picture of ~~himself~~ the applicant and the sum of one hundred fifty dollars. Additional costs of simultaneous examination 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 show proof that ~~he has the following qualifications~~ applicant:

1. Is a graduate of a dental college recognized by the board.
2. Is a person of good moral character.

SECTION 3. AMENDMENT. Section 43-28-12 of the North Dakota Century Code is hereby amended and reenacted to read 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 ~~present himself to appear before~~ the board, which shall give him an examination to test ~~his the applicant for~~ fitness ~~for the to practice of~~ dentistry. The board may require the applicant to supply the board with the results of ~~his 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 examination may include the following subjects:~~

- 1- Anatomy-
- 2- Physiology-
- 3- Oral Surgery-
- 4- Chemistry-
- 5- Materia medica-
- 6- Therapeutics-
- 7- Metallurgy-
- 8- Histology-
- 9- Pathology-
- 10- Bacteriology-
- 11- Orthodontics-
- 12- Prosthetic dentistry-
- 13- Crown and bridge, X-ray, operative, surgical and mechanical dentistry-
- 14- Such other subjects which the board, at the time the examination is given, may deem necessary-

SECTION 4. AMENDMENT. Section 43-28-12.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-12.1. Simultaneous examination. The results of an examination given in another state by that state's equivalent to 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 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 5. AMENDMENT. Section 43-28-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-14. Reexamination - Fee - Additional education. If an applicant fails to pass the examination given by the board, he the applicant may apply for another examination, and upon the payment of a fee of twenty-five dollars shall be reexamined. The board shall determine the number of times an applicant may be reexamined, provided, that 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 applying for another examination in this state.

SECTION 6. AMENDMENT. Section 43-28-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 valid for only one year and shall 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 and must be submitted prior to January first. The holder of a license and certificate of registration shall display the same conspicuously in his the holder's place of business. The certificate of registration or the renewal thereof, shall be 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 7. AMENDMENT. Section 43-28-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 his the certificate of registration prior to January first, after thirty days' written notice of such default without proper payment, the board may revoke his the license to practice dentistry forthwith and notify such the dentist thereof of the revocation. The payment of the annual fee within the thirty-day period, with an additional sum of fifty dollars, will excuse the default.

SECTION 8. AMENDMENT. Section 43-28-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-20. Plea - Answer - Trial of issues - Witnesses and cost. A dentist served with a complaint and order shall appear before the board at the time appointed for such hearing and shall either plead to or answer the charge made against him the dentist. The dentist may admit the truth of the charge prior to the hearing and waive any right to a hearing. If he the dentist admits the truth of the charge then the board shall make appropriate findings of fact and conclusions of law and order the suspension or revocation of his the dentist's license and certificate, or any other disciplinary action the board finds appropriate without any further proceedings. But if the accused fails to appear or admit the truth of the charge prior to the hearing, or if he the dentist appears and denies the charge then the issues presented by the pleadings shall be heard, tried and determined upon the merits in accordance with the procedure prescribed by chapter 28-32. The board and the accused may be represented by licensed attorneys. Witnesses may be subpoenaed, examined and cross-examined, depositions may be taken, filed and introduced in evidence in the manner provided for the production and examination of witnesses and the taking of depositions in civil actions in the district court. The hearing for good cause shown, may be continued from time to time until the trial has been completed. The board shall make a full and complete written record of all the testimony and exhibits offered and received in evidence and of all proceedings had before it at such hearing. A transcript of the evidence and of all proceedings had and made a matter of record shall be furnished to the accused upon written request therefor upon payment of a reasonable fee to be fixed by the board.

SECTION 9. AMENDMENT. Section 43-28-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-21. Determination - Order - Appeal and review.

1. If the board finds and determines, after due hearing, that the accusations contained in the complaint have been established by substantial evidence, the board shall make its findings of fact, conclusions of law, and issue its order suspending or revoking the license and certificate of registration, or take any other disciplinary action the board finds appropriate, or order the dismissal of the proceedings upon the merits, for failure of proof. If the dentist did not admit the truth of the charge prior to the hearing, and the board determines the accusations contained in the charge were established by substantial evidence, the board may assess the dentist for the board's costs, disbursements, and attorneys' fees incurred for the hearing. The original order shall be filed with the secretary and a copy thereof shall be served upon the respondent by certified mail within ten days from the entry thereof.

2. If the accused feels aggrieved by or dissatisfied with the order of the board ~~he~~ the accused shall have the right to appeal therefrom to the district court of the county wherein such proceedings were tried and determined for a review thereof in said court within the time and in the manner prescribed by law for appeals to the district court from orders issued by administrative agencies. If the court does not reverse the order of the board, the dentist may be assessed the costs, disbursements, and attorneys' fees incurred by the board for the appeal.

SECTION 10. AMENDMENT. Section 43-28-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-28-23. Notice to board of change of address. Within ~~ten~~ thirty days after a licensed and registered dentist changes ~~his~~ the dentist's place of business, ~~he~~ the dentist shall notify the secretary-treasurer of the board of ~~his~~ the new address. The notice shall be given by certified mail and return receipt requested. Such licensed and registered dentist shall not practice dentistry in ~~his~~ the state for more than ~~ten~~ thirty days after such removal without giving such notice.

Approved March 31, 1985

CHAPTER 488

SENATE BILL NO. 2479
(Senator W. Meyer)
(Representative R. Berg)

PRIVATE SECURITY SERVICES

AN ACT to amend and reenact subsection 2 of section 43-30-01, and sections 43-30-04, 43-30-15, and 43-30-16 of the North Dakota Century Code, relating to the definition of private security service, rules adopted by the attorney general concerning the regulation of private investigative and security services, appeals to the private investigative and security board, and examination and license fees.

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

SECTION 1. AMENDMENT. Subsection 2 of section 43-30-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Private security service" means furnishing for hire security officers or other persons to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares, and merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers, or the business of performing the service of such security officer or other person for any of these purposes, ~~including any investigative service required in carrying out these duties.~~

SECTION 2. AMENDMENT. Section 43-30-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-04. Powers of attorney general. The attorney general shall establish by rule the procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services ~~including installation and servicing of protective devices and systems.~~ The attorney general shall establish the qualifications required for licensing armed

security personnel. All rules adopted by the attorney general and appeals therefrom, shall be in accordance with chapter 28-32.

SECTION 3. AMENDMENT. Section 43-30-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-15. Appeal from decision-- Application of chapter 28-32. Any decision of the attorney general must be appealed to the private investigative and security board prior to any judicial proceeding. Chapter 28-32 governs the procedures under this chapter. Any decision made by the attorney general under section 43-30-12 is governed by chapter 28-32.

SECTION 4. AMENDMENT. Section 43-30-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-16. Examination and license fees.

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator or a license to provide private security services is fifty dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator or a license to provide private security services is one hundred dollars.
3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency is fifty dollars. The fee for the issuance or the renewal of a license to conduct a private security or detective agency is two hundred dollars.
4. The one-time fee to be paid by an applicant for the issuance of a private security training certificate is five dollars.
5. The annual fee to be paid by an applicant for the issuance of an armed private security certificate is five dollars.
6. ~~The fee to be paid for an application for a security system is fifty dollars. The fee for registration of the system is one hundred dollars.~~
7. The fee to be paid for the issuance of a duplicate license is ten dollars.

Approved March 30, 1985

CHAPTER 489

HOUSE BILL NO. 1535
(Unhjem)

HEARING AID DEALER LICENSURE

AN ACT to amend and reenact section 43-33-04, subsection 4 of section 43-33-07, and subdivision g of subsection 2 of section 43-33-12 of the North Dakota Century Code, relating to the licensure of hearing aid dealers.

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

SECTION 1. AMENDMENT. Section 43-33-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-33-04. Persons and practices not affected.

- 1- This chapter is 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 person or organization employing such person does not sell hearing aids or accessories thereto.
- 2- ~~This chapter does not apply to a person who is a licensed physician and surgeon or osteopath.~~

SECTION 2. AMENDMENT. Subsection 4 of section 43-33-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. In addition to all other fees, the fee for an examination to determine qualifications for license is thirty dollars shall be set by the board.

SECTION 3. AMENDMENT. Subdivision g of subsection 2 of section 43-33-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- g. The fitting and sale of a hearing aid to any person fourteen eighteen years of age or younger unless within ninety days six months prior to 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.

Approved March 27, 1985

CHAPTER 490

HOUSE BILL NO. 1592
(Representatives Gullickson, Keller, Vander Vorst)
(Senator W. Meyer)

WATER WELL PUMP AND PITLESS UNIT INSTALLERS CERTIFICATION

AN ACT to create and enact three new sections to chapter 43-35 of the North Dakota Century Code, relating to the certification of water well pump and pitless unit installers; and to amend and reenact sections 43-35-03, 43-35-11, 43-35-12, 43-35-13, 43-35-14, 43-35-16, 43-35-20, 43-35-21, and 43-35-22 of the North Dakota Century Code, relating to the certification of water well pump and pitless unit installers.

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

SECTION 1. AMENDMENT. Section 43-35-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-03. State board of water well contractors - Members' appointment - Qualification. The state board of water well contractors shall consist of the state engineer and the state health officer, or their duly authorized designees, and two water well contractors appointed by the governor, and one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

SECTION 2. AMENDMENT. Section 43-35-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-11. Certificate required. After the first day of January 1972 ~~no~~ No person, partnership, firm, or corporation shall engage in the business of water well contracting or water well pump and pitless unit installation unless certified to do so by the board of water well contractors.

SECTION 3. AMENDMENT. Section 43-35-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-12. Examination - When held - Notice. The board shall hold meetings at such times and such places as it shall designate for the purpose of administering an examination to those persons desiring to

become certified as water well contractors or water well pump and pitless unit installers. The board shall give no less than ten days' written notice to each applicant of the time and place of such examination. The board shall develop separate examinations for the certification of water well contractors and for the certification of water well pump and pitless unit installers.

SECTION 4. AMENDMENT. Section 43-35-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-13. Certificate - How obtained - Fee - Bond. Any person desiring to take the examination to become a certified water well contractor shall first have completed a minimum of one year apprenticeship or experience in water well drilling and construction under the direct supervision of a certified water well contractor or have completed a vocational school program of at least one year in water well construction and shall make application to the board and. Any person desiring to take the examination to become a certified water well pump and pitless unit installer shall first have completed a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a certified water well pump and pitless unit installer or have completed a vocational school program of at least one year in water well pump and pitless unit installation. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of ten dollars. If upon examination the applicant is found to be qualified as a water well contractor or a water well pump and pitless unit installer, the board shall issue to him a that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. Such certificate shall The board may offer a combined examination for certification of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single certificate for successful completion of the combined examination. Certificates issued under this chapter are not be transferable.

SECTION 5. AMENDMENT. Section 43-35-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-14. Bond required. Before receiving a certificate as a water well contractor under this chapter, a qualified applicant shall execute and deposit with the board a surety bond in the amount of one two thousand dollars conditioned for the faithful performance of all water well or pump and pitless unit installation contracts undertaken by him and the strict compliance with the provisions of this chapter.

SECTION 6. A new section to chapter 43-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certification of persons engaged in installation of water well pumps and pitless units prior to certification requirement. Upon

application and sworn affidavit and the payment of a registration fee of not more than fifty dollars, as set by the board, the board shall issue an appropriate certificate, without examination, to any person who has been engaged in the business of water well pump and pitless unit installation as an occupation for at least one year prior to July 1, 1985, if the application is made prior to July 1, 1986. A person certified as a water well contractor under this chapter before July 1, 1985, is deemed to be properly certified as a water well pump and pitless unit installer under this chapter subject to the renewal provisions of section 43-35-17 and is not required to apply for and receive a separate certificate under this section.

SECTION 7. AMENDMENT. Section 43-35-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-16. Display of certification. The board shall furnish each certified water well contractor a decal for each drill rig the contractor owns or leases. Such decal shall be displayed in a conspicuous place on the drill rig.

SECTION 8. A new section to chapter 43-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Firm engaged in installation of water well pump and pitless units to employ certified installer - Exception. No person may engage in the business of installing water well pumps and pitless units in the state after July 1, 1986, unless a certified installer, who is responsible for the proper installation of the pump and pitless unit, is in charge of the installation. This chapter does not prohibit any person from installing water well pumps and pitless units on that person's own premises for that person's own use.

SECTION 9. A new section to chapter 43-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Standards for installation of water well pumps and pitless units. All installation of water well pumps and pitless units must comply with the rules adopted by the state department of health and the board.

SECTION 10. AMENDMENT. Section 43-35-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-20. Revocation or suspension of certificate - Grounds for - How reinstated. The board may suspend or revoke any certificate issued under the provisions of this chapter if the holder is found guilty by the board of any violation of the rules and regulations established and promulgated adopted by the department of health or the board after a hearing duly held substantially in conformance with the provisions of chapter 28-32. Six months after any certificate has been revoked, an application may be made for another certificate in the same manner as a new certificate is obtained.

SECTION 11. AMENDMENT. Section 43-35-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-21. Certification to nonresidents - Reciprocity. To the extent that other states which provide for the certification of water well contractors or water well pump and pitless unit installers provide for similar action, the state board of water well contractors may grant certification to water well contractors and water well pump and pitless unit installers certified by other states, upon payment by the applicant of the required fee and the furnishing of a bond as provided by section 43-35-14, after being furnished with proof that the qualifications of the applicant are equal to the qualifications of holders of such certificates in this state.

SECTION 12. AMENDMENT. Section 43-35-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-22. Contracting ~~for well drilling~~ without certification - Penalty. Any person contracting to drill a water well or install a pump or pitless unit for another without being certified in accordance with ~~the provisions of~~ this chapter or otherwise violating ~~the provisions of~~ this chapter ~~shall be~~ is guilty of an infraction.

Approved March 27, 1985

CHAPTER 491

SENATE BILL NO. 2369
(Senator Matchie)
(Representative DeMers)

SOCIAL WORKERS LICENSURE EXEMPTIONS

AN ACT to amend and reenact subsection 1 of section 43-41-02 of the North Dakota Century Code, relating to exemptions from the licensing requirements for social workers.

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

SECTION 1. AMENDMENT. Subsection 1 of section 43-41-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Nothing in this chapter shall be construed to prevent licensed physicians, surgeons, nurses, psychologists, psychotherapists, attorneys, court employees, marriage counselors, family counselors, child counselors, or members of the clergy any person from doing work within the standards and ethics of their professions that person's profession and callings calling, provided they do not hold themselves out that the person does not present to the public, by title or description of services as being engaged, that the person is engaging in social work practice.

Approved April 11, 1985

CHAPTER 492

SENATE BILL NO. 2374
(Senators Stenehjem, J. Meyer, Holmberg)
(Representatives DeMers, Cleveland, Unhjem)

SOCIAL WORKERS LICENSURE, EXCEPTIONS, AND WAIVER

AN ACT to create and enact two new subsections to section 43-41-02 and a new subsection to section 43-41-06 of the North Dakota Century Code, relating to exceptions to the social work practice licensing requirements and the waiver of licensing requirements for certain social workers; and to amend and reenact subsection 5 of section 43-41-01 and section 43-41-05 of the North Dakota Century Code, relating to the definition of social work practice and licensing requirements for the private practice of social work.

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

SECTION 1. AMENDMENT. Subsection 5 of section 43-41-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Social work practice consists of the professional application of social work values, principles, and techniques in: helping people obtain tangible services; counseling; psychotherapy with individual individuals, families, and groups; helping communities or groups to improve social and health services; providing social casework; administration of a social work program directly supervising programs providing social work services; social work education; social work research; or any combination of these. The practice of social work requires knowledge of human development and behavior, of social, economic, and cultural institutions, and of the interaction of all of these factors.

SECTION 2. Two new subsections to section 43-41-02 of the 1983 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

This chapter does not require public or appointed officials or administrators, acting in that capacity, or any other social or human service administrators who do

not hold themselves out to the public as social workers, by title or description of services, to be licensed or certified under this chapter. However, any individual may be licensed if otherwise qualified under this chapter.

This chapter does not prevent individuals with masters or doctoral degrees in the field of counseling with specialization in mental health from serving as counselors or therapists in mental health in state institutions or regional human service centers, if they do not hold themselves out to the public as social workers.

SECTION 3. AMENDMENT. Section 43-41-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-41-05. Private practice of social work. No person may engage in the private practice of social work unless that person:

1. Is licensed under this chapter as a licensed certified social worker.
2. Has had three years of post master's experience under the supervision of a licensed certified social worker or a social worker who is eligible for licensure as a licensed certified social worker.
3. Is registered with the board as eligible for private practice.

SECTION 4. A new subsection to section 43-41-06 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

From July 1, 1985, to December 1, 1986, an applicant is excused from the examination and degree requirements if:

- a. The applicant has been engaged in the practice of social work for two of the three years immediately prior to making the application for a license;
- b. The applicant was initially employed in a social work practice position in this state after July 1, 1983, but before December 1, 1984; and
- c. The applicant was employed continuously in a social work practice position in this state during the period of December 1, 1984, to December 1, 1986.

Approved April 11, 1985

CHAPTER 493

HOUSE BILL NO. 1313
(Representatives Moore, Goetz, Hill)
(Senators W. Meyer, Lips, J. Meyer)

RESPIRATORY CARE PRACTITIONERS

AN ACT to provide for the licensure and regulation of respiratory care practitioners; to establish a North Dakota respiratory care examining board; and to provide a penalty.

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

SECTION 1. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota respiratory care examining board.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education.
3. "Certification examination" means the examination for respiratory therapy technicians administered by the national board for respiratory care.
4. "Certified respiratory care practitioner" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory care practitioner.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession.
6. "Registered respiratory care practitioner" means a person licensed by the board to practice respiratory care.
7. "Registry examination" means the examination for respiratory therapists administered by the national board for respiratory care.

8. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, respiratory rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and mechanical airways, and insertion and maintenance of artificial airways. Respiratory care also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.
9. "Respiratory care assistant" means any person not licensed to practice respiratory care who assists, under the onsite direction or supervision of a registered respiratory care practitioner or a certified respiratory care practitioner, in the practice of respiratory care and who performs a limited scope of practice commensurate with the assistant's education and training.
10. "Respiratory therapy" means respiratory care.

SECTION 2. North Dakota respiratory care examining board.

1. There is created a North Dakota respiratory care examining board. The board is responsible for the enforcement and administration of this Act and for the adoption of any rules necessary to govern the practice of respiratory care in this state.
2. The board consists of seven members appointed by the governor. Two members must be registered respiratory care practitioners and two members must be certified respiratory care practitioners, chosen from a list of four registered respiratory care practitioners and four certified respiratory care practitioners supplied to the governor by the North Dakota chapter of the Dakota society for respiratory therapy. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint two members to be representatives of the general public. Members are appointed for terms of three years, except of those first appointed, two must be appointed for terms of one year, two must be appointed for terms of two years, and three must be appointed for terms of three years. Each member holds office until the

member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.

3. The board shall annually select a chairman from among its members. It must meet at least twice each year and must also meet upon the call of the chairman.
4. The board shall consult with the North Dakota chapter of the Dakota society for respiratory therapy before adopting any rules.

SECTION 3. Respiratory care practitioner licensing - Fees.

1. The board shall license as a registered respiratory care practitioner any applicant whom the board determines to be qualified to perform the duties of a registered respiratory care practitioner. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. Any respiratory care practitioner who has been registered by the national board for respiratory care prior to July 1, 1985, must, upon application, be granted a license as a registered respiratory care practitioner. The board shall establish fees not in excess of fifty dollars for the issuance and renewal of licenses.
2. The board shall license as a certified respiratory care practitioner any applicant whom the board determines to be qualified to perform the duties of a certified respiratory care practitioner. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. Any respiratory care practitioner who has been certified by the national board for respiratory care prior to July 1, 1985, must, upon application, be granted a license as a certified respiratory care practitioner. The board shall establish fees not in excess of thirty-five dollars for the issuance and renewal of licenses.
3. Upon receipt of evidence showing that a person was employed in the practice of respiratory care before July 1, 1985, and that the person does not meet the criteria established in either subsection 1 or 2, the board shall license a respiratory therapist to continue to practice as a registered respiratory care practitioner, and a respiratory therapy technician to continue to practice as a certified respiratory care practitioner, for a period that expires December 31, 1988. To qualify for

- renewal of the license that person shall, prior to the expiration of the initial license, pass a board-prescribed examination that demonstrates to the board's satisfaction that that person is qualified to perform the duties of a registered respiratory care practitioner or certified respiratory care practitioner.
4. The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:
 - a. Is not qualified or competent to perform the duties of a registered respiratory care practitioner or a certified respiratory care practitioner.
 - b. Has attempted to obtain or has obtained licensure under this Act by fraud or material misrepresentation.
 - c. Has been found guilty by the board of gross negligence as a registered respiratory care practitioner or certified respiratory care practitioner.
 - d. Has engaged in conduct as a registered respiratory care practitioner or certified respiratory care practitioner which is unethical, unprofessional, or detrimental to the benefit of the public.
 - e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
 - f. Has been convicted of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
 - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
 - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
 5. Except as provided in subsection 3, licenses issued under this Act expire annually on January thirty-first, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board.

6. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

SECTION 4. Respiratory care practice. The practice of respiratory care may be performed in hospitals, as ambulatory or in-home care, and in other settings where respiratory care is provided in accordance with a prescription of a licensed physician. In addition, respiratory care may be provided during the transportation of a patient, and under any circumstances where an epidemic or public disaster necessitates respiratory care. No person may practice, nor represent oneself as able to practice, as a registered respiratory care practitioner without being licensed as a registered respiratory care practitioner, or as a certified respiratory care practitioner without being licensed as a certified respiratory care practitioner, in accordance with this Act.

SECTION 5. Application of Act.

1. This Act does not prohibit a person enrolled in a bona fide respiratory care training program from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under the supervision or direction of a physician or registered respiratory care practitioner and the person is identified as a "student respiratory care practitioner".
2. A graduate of a bona fide respiratory care training program, who has applied for licensure under this Act may practice respiratory care under the supervision or direction of a physician or a registered or certified respiratory care practitioner; provided, that the graduate is identified as a "respiratory care practitioner applicant". If an applicant fails to pass one of the next three immediately available certification or registry examinations following eligibility, all privileges under this subsection cease; except, that if the applicant has enrolled in a remedial refresher respiratory care course approved by the board, then the privileges provided under this subsection continue until the results of the next available certification or registry examination are made public.
3. If examinations prepared by the national board for respiratory care are no longer available or become unacceptable to the board, the board may develop, approve, and use examinations for the licensure of registered respiratory care practitioners and certified respiratory care practitioners.
4. This Act does not prevent a licensed and qualified member of another health care profession from performing any of the duties of a registered respiratory care practitioner

or a certified respiratory care practitioner that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory care practitioner or certified respiratory care practitioner.

5. This Act does not prohibit self-care by a patient or the gratuitous care by a friend or member of the family who does not represent or hold oneself out to be a registered or certified respiratory care practitioner.
6. This Act does not prohibit a registered or certified respiratory care practitioner from performing advances in the art or techniques of respiratory care learned through formal or specialized training.

SECTION 6. Reciprocity. An applicant for licensure under this Act may be granted a license upon satisfactory proof to the board that the applicant is licensed to practice respiratory care under the laws of another state which impose substantially the same requirements as this Act.

SECTION 7. Penalty. Any person who violates this Act or any rules adopted under this Act is guilty of an infraction.

Approved March 29, 1985

CHAPTER 494

SENATE BILL NO. 2410
(Senator Kusler)
(Representatives Nalewaja, Oban, Gunsch)

ENVIRONMENTAL HEALTH PRACTITIONERS

AN ACT to provide for licensure of environmental health practitioners; and to provide a penalty.

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

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Advisory board" means the following or their appointed agents: secretary of state as chairperson, the director of the state laboratories department, the state health officer, and the president of the North Dakota environmental health association. The secretary of state shall appoint one agent of a district or local health unit and one consumer.
2. "Environmental health practitioner" means a person who, by environmental health science education and experience, is qualified and licensed under this Act to practice environmental health.
3. "Practice of environmental health" means any service or work, such as consultation, investigation, evaluation, surveys, and inspections in the environmental program areas of food, beverage, housing, and lodging sanitation.

SECTION 2. Licensure required. No person may engage in the practice of environmental health, nor use the title "environmental health practitioner" or the initials "E.H.P." or otherwise hold oneself out as able to engage in the practice of environmental health unless the person is licensed pursuant to this Act.

SECTION 3. Advisory board duties and compensation. The advisory board shall meet at the request of the secretary of state to assist in implementation of duties as defined in section 4. The advisory board shall be reimbursed for any necessary expenses, but shall

serve without further compensation except as may be authorized and fixed by the secretary of state by rule.

SECTION 4. Powers and duties of secretary of state. The secretary of state shall adopt rules consistent with and necessary for the implementation and enforcement of this Act, including rules concerning the:

1. Qualifications and requirements for licensure under this Act.
2. Application for licensure and renewal of license.
3. Licensure.
4. Fees that may not exceed fifty dollars for licensure fees.
5. Scope of practice.
6. Ethical standards of conduct.
7. Continuing competency and education requirements.
8. Grievances and complaints.
9. Reimbursement of advisory board expenses.
10. Emergency exemptions as to requirements for licensure under this Act.

SECTION 5. Exception from requirements. The secretary of state must license all persons actually engaged in the practice of environmental health in this state upon receipt of proof of a bona fide practice in this state; however, the applicant must file an application and present such proof prior to July 1, 1986, or become subject to licensure requirements of this Act.

SECTION 6. Environmental health practitioner licensure fee administration fund. There shall be maintained in the state treasury a special fund to be known as the environmental health practitioner licensure fee administrative fund. All money deposited or paid into this fund shall be continuously available to the secretary of state for reimbursement to the advisory board, and shall not lapse at any time or be transferred to any other fund. The fund shall consist of any money collected by the secretary of state in accordance with section 4 of this Act.

SECTION 7. Denial, suspension, revocation of license. The secretary of state may refuse to issue or renew a license or may suspend or revoke a license when the licensee or applicant for license has engaged in unprofessional conduct. Unprofessional conduct includes:

1. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.

2. Engaging in unprofessional conduct, as defined by the rules adopted by the secretary of state, or violating the code of ethics adopted by the secretary of state.
3. Conviction of an offense, as defined by section 12.1-01-04, determined by the secretary of state to have a direct bearing on the person's ability to serve the public in the capacity of a licensed environmental health practitioner; or the secretary of state determines that such applicant or licensee, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1.
4. Violation of any order or rule adopted by the secretary of state.
5. Violation of this Act.

The person may apply to the secretary of state for reinstatement after one year from the date of revocation of a license. The secretary of state may accept or reject an application for reinstatement, or may require conditions and an examination for reinstatement.

SECTION 8. Penalty. Any person who violates this Act is guilty of a class B misdemeanor.

Approved April 15, 1985

CHAPTER 495

HOUSE BILL NO. 1318
(Representatives DeMers, Wentz, Schneider)
(Senators Kusler, Todd)

DIETITIANS AND NUTRITIONISTS

AN ACT to provide for the licensure of dietitians and nutritionists;
and to provide a penalty.

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

SECTION 1. Definitions. As used in this Act, unless the
context or subject matter otherwise requires:

1. "Association" means the North Dakota dietetic association.
2. "Board" means the board of dietetic practice.
3. "Dietetics" means the application of principles derived from integrating knowledge of food, nutrition, biochemistry, physiology, management, and behavioral and social science to achieve and maintain the health of people by providing nutrition care services.
4. "Dietitian" includes dietician.
5. "General nutrition services" means the counseling of individuals or groups in the selection of food to meet normal nutritional needs, and the assessment of nutritional needs of individuals or groups by planning, organizing, coordinating, and evaluating the nutritional components of community health services.
6. "Licensed registered dietitian" means a person licensed to practice dietetics as provided in this Act.
7. "Licensed nutritionist" means a person licensed to provide general nutrition services as provided in this Act.
8. "Nutrition assessment" means the screening and evaluation of the nutrition of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine their nutritional needs and

recommend appropriate nutritional intake including enteral and parenteral nutrition.

9. "Nutrition care services" includes:
 - a. Providing nutrition assessment.
 - b. Planning or providing of food appropriate for physical and medical needs.
 - c. Providing nutrition counseling to meet both normal and therapeutic needs.
 - d. Providing general nutrition services and related nutrition activities.

SECTION 2. Board of dietetic practice - Membership - Terms - Meetings.

1. A board of dietetic practice is established. The board consists of five members appointed by the governor, all of whom must be residents of the state at the time of their appointment, and four of whom must be appointed from a list of names submitted by the association. The persons appointed from the list submitted by the association must have been engaged in the teaching or rendering of dietetics or general nutrition services to the public, or in research in dietetics or general nutrition services for three years immediately preceding their appointment. Four board members must be licensed registered dietitians or licensed nutritionists, and at least three members must be licensed registered dietitians. The members first appointed to the board need not be licensed under this Act for appointment to their first term on the board, but must possess the qualifications necessary for licensure under this Act. One member must be appointed to represent consumers of health services.
2. The governor, prior to September 1, 1985, shall appoint two board members for a term of one year, two for a term of two years, and one for a term of three years. Appointments made thereafter are for terms of three years, but no person may be appointed to serve more than two consecutive full or partial terms. Terms begin on the first day of September and end on the last day of August or until successors are appointed. An appointment of any member to serve out the remaining term of any position on the board that becomes vacant must be made in the same manner as the original appointment for that position.
3. The governor may remove any board member for good cause after giving that member a written statement of the reasons for removal and after that member has had an opportunity for a hearing.

4. The board shall meet during September of each calendar year and select a chairperson. At least one additional meeting must be held before September of the next calendar year. Other meetings may be convened at the call of the chairperson or the written request of any two board members. All meetings of the board are open to the public, except that the board may hold closed sessions to approve an examination, or upon request of an applicant who fails an examination, to prepare a response indicating any reason for the applicant's failure.
5. Members of the board receive no compensation for their services, but are entitled to mileage and travel expenses as provided in sections 54-06-09 and 44-08-04, and per diem as set by the board.

SECTION 3. Board powers, duties, and authority. The board shall administer, coordinate, and enforce this Act, evaluate the qualifications, and approve an examination for licensure under this Act. The board shall keep any records and minutes as are necessary to carry out its functions. The board may:

1. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating this Act.
2. Adopt rules pursuant to chapter 28-32, to implement this Act, including rules relating to professional licensure and the establishment of ethical standards of practice for licensed registered dietitians and licensed nutritionists.

SECTION 4. Board administrative authority and requirements.

1. The board may employ an executive secretary and other officers and employees it deems necessary.
2. The executive secretary shall pay, upon approval of the board, all appropriate expenses incurred by the board in the administration of this Act.

SECTION 5. Fees. The board shall set and collect fees for application, initial license, renewal of license, late renewal, and limited permit. These fees must be set in such an amount as to reimburse the board, to the extent feasible, for the cost of the services rendered.

SECTION 6. License required - Title - Abbreviation. No person may practice, nor represent oneself as able to practice, as a licensed registered dietitian or a licensed nutritionist, using the title "licensed nutritionist", "dietitian", "registered dietitian", "licensed dietitian", or "licensed registered dietitian", nor use the abbreviations "LN", "RD", "LD", or "LRD" unless so licensed under this Act. A licensed nutritionist may use the title "licensed nutritionist" and the abbreviation "LN". A licensed registered

dietitian may use the title "licensed registered dietitian" and the abbreviation "LRD".

SECTION 7. Requirements for licensure - Licensed nutritionist.

1. An applicant for licensure as a licensed nutritionist must file a written application with the board and:
 - a. Have satisfactorily completed academic requirements required by the board, and have received a baccalaureate degree in the field of dietetics or food and nutrition, as approved by the board, from an accredited college or university; or
 - b. Have received a master's or doctorate degree in human nutrition, nutrition education, foods and nutrition, or public health nutrition from an accredited college or university, or have received a master's or doctorate degree in a related field that meets eligibility requirements of the commission on dietetic registration of the American dietetic association; or
 - c. Maintain membership in one of the following organizations: American institute of nutrition, American society for clinical nutrition, or the American board of nutrition; or
 - d. Present evidence to the board regarding employment and competence as a nutritionist before July 1, 1985, and the inability to meet the criteria of subdivision a, b, or c.
2. An applicant for renewal of a license as a licensed nutritionist must:
 - a. Comply with subsection 1.
 - b. Have satisfactorily completed continuing education requirements as specified and approved by the board.

SECTION 8. Requirements for licensure - Licensed registered dietitian.

1. Applicants for licensure as a licensed registered dietitian must:
 - a. Comply with subsection 1 of section 7 of this Act.
 - b. Have satisfactorily completed the education and experience requirements for dietitians approved by the commission on dietetic registration of the American dietetic association.

- c. Have satisfactorily completed the examination approved and administered by the commission on dietetic registration of the American dietetic association.
2. Applicants for renewal of licensure as a licensed registered dietitian must:
 - a. Comply with subsection 1.
 - b. Have satisfactorily completed continuing education requirements specified by the commission on dietetic registration of the American dietetic association.

SECTION 9. Waiver of requirements for licensure of dietitians. Upon application, the board shall grant a license to any person certified prior to July 1, 1985, as a registered dietitian by the commission on dietetic registration of the American dietetic association. Upon application of any person certified by the commission on dietetic registration of the American dietetic association after July 1, 1985, the board may waive the examination, education, and experience requirements and grant the applicant a license if the board determines that the requirements for certification are equivalent to the related requirements for licensure in this Act.

SECTION 10. Persons excepted from license requirement. This Act does not prevent or restrict the practice, services, or activities of:

1. Persons licensed to practice medicine, nursing, pharmacy, or dentistry consistent with the accepted standards of their profession, if the persons do not represent themselves as licensed registered dietitians or licensed nutritionists.
2. Any person pursuing a course of study in an approved program leading to a degree in the field of dietetics from an accredited college or university, if the person is designated by a title which clearly indicates that person's status as a student or trainee.
3. Any person in the process of fulfilling the experience requirements of section 7 or 8 of this Act, if the activities and services constitute a part of the experience necessary to meet the requirements of those sections and the person is designated by a title which clearly indicates that person's status as a student or trainee.
4. Any person who does not meet the requirements of subdivision a, b, or c of subsection 1 of section 7 of this Act, and who provides nutrition care services, including weight control programs, under the supervision of a licensed registered dietitian, a dietitian licensed in another state that has licensure requirements

considered by the board to be at least as stringent as the requirements for licensure under this Act, or a dietitian registered by the commission on dietetic registration of the American dietetic association.

5. A person practicing dietetics or providing general nutrition services as a duty of serving in the armed forces.
6. Any person practicing dietetics in this state for no more than ten days annually, if the person has met the commonly accepted standards for the practice of dietetics specifically defined by the board.
7. Any person practicing dietetics in this state for more than ten days annually who has pending before the board an application for licensure as a licensed registered dietitian under this Act.
8. An educator who is in the employ of a federal, state, county, or municipal agency, or other political subdivision, or an elementary or secondary school, or an accredited institution of higher education insofar as the activities and services are part of the duties of the employee's position; or who is in the employ or service of a nonprofit organization approved by the board.
9. Any person having received a baccalaureate degree in home economics, if the person does not represent that the person is a licensed registered dietitian or licensed nutritionist, insofar as the services and activities are within the scope of that person's education and training.
10. A person who markets or distributes food, food materials, or dietary supplements, or any person who engages in the explanation of the use of those products or the preparation of those products, if that person does not represent that that person is a licensed registered dietitian or licensed nutritionist.

SECTION 11. Issuance of license. The board shall issue a license to any person who meets the requirements of this Act upon payment of the prescribed fee.

SECTION 12. Limited permits. A limited permit to practice as a licensed registered dietitian shall be issued by the board upon application and submission of evidence of successful completion of the education and experience requirements under subdivision b of subsection 1 of section 8 of this Act. The limited permit expires one year from the date of issuance. The limited permit may be renewed for a period not to exceed six months upon submission to the board of a satisfactory explanation for the applicant's failure to become licensed within the original one-year period.

SECTION 13. Reciprocity. The board shall grant a license to any applicant who presents proof of current licensure as a dietitian in another state which has licensure requirements considered by the board to be at least as stringent as the requirements for licensure under this Act.

SECTION 14. Renewal of license. Any license issued under this Act expires one year after it is issued unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no late renewal of a license may be granted more than one year after its expiration.

SECTION 15. Suspension and revocation of license - Refusal to renew.

1. The board may deny a license, refuse to renew a license, suspend a license, or revoke a license, or may impose probationary conditions on a licensee if the licensee or applicant has been found guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct includes:
 - a. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.
 - b. Being guilty of unprofessional conduct as defined by rules adopted by the board, or violating any code of ethics adopted by the American dietetic association.
 - c. Being convicted of an offense, as defined by section 12.1-01-04, that the board determines has a direct bearing upon a person's ability to serve the public as a licensed registered dietitian or a licensed nutritionist or, following conviction of any offense, the board determines that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
 - d. Violating any lawful order or rule of the board.
 - e. Violating this Act.
2. A denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a licensee may be ordered by the board after a hearing pursuant to rules adopted by the board. An application for reinstatement may be made to the board one year from the date of the revocation of a license. The board may at its discretion accept or reject an application to consider such reinstatement.

SECTION 16. Injunction. The civil remedy of injunction is available to the board to restrain and enjoin violations of this Act.

SECTION 17. Penalty. Any person who violates this Act is guilty of a class B misdemeanor.

Approved April 15, 1985

OFFICES AND OFFICERS

CHAPTER 496

SENATE BILL NO. 2282
(Holmberg)

ELECTED OFFICIALS QUALIFICATION DATE

AN ACT to amend and reenact sections 27-05-02 and 44-01-03 of the North Dakota Century Code, relating to the date state and district officers qualify for office.

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

SECTION 1. AMENDMENT. Section 27-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-02. Election and term of office of district judges. There shall be elected in each judicial district of this state the number of judges for such district provided for by law. Any judge so elected shall take office on the first Monday in January next succeeding his election and shall hold office for six years or until his successor is elected and has qualified.

SECTION 2. AMENDMENT. Section 44-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-01-03. When state and district officers shall qualify. Except when otherwise specially provided, all state and district officers shall qualify on or before the first day of January next succeeding their election, or within ten days thereafter, and on said first day of January or within ten days thereafter, shall enter upon the discharge of the duties of their respective offices, provided that when a person is elected to fill an unexpired term in a district office then vacant or then held by an appointee, such person may qualify and enter upon the discharge of the duties of such office at any time after receiving a certificate of election to that office but not later than the tenth first day of January next succeeding the date of his election to the unexpired term of office.

Approved March 27, 1985

CHAPTER 497

HOUSE BILL NO. 1073
(Legislative Council)
(Interim Judiciary "B" Committee)

FILLING VACANCY IN COUNTY, DISTRICT, OR SUPREME COURT

AN ACT to amend and reenact sections 44-02-03 and 44-02-04 of the North Dakota Century Code, relating to filling a vacancy in the office of district or county judge or supreme court justice.

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

SECTION 1. AMENDMENT. Section 44-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-02-03. Vacancy in state or district office - How filled. Any vacancy in a state or district office, except in the office of a member of the legislative assembly, ~~shall~~ must be filled by appointment by the governor. A vacancy in the office of a supreme court justice or district court judge must be filled as provided in chapter 27-25. If during a vacancy in the office of governor, the lieutenant governor and the secretary of state ~~shall be~~ are impeached, displaced, resign, or die, or from mental or physical disease or otherwise become incapable of performing the duties of the office of governor as provided by sections ~~72 2~~ and ~~77 7~~ of article V of the Constitution of North Dakota, then the succession to the office of governor ~~shall be~~ is the speaker of the house, president pro tem of the senate, attorney general, in the order named. Each succeeding person named shall hold the office of governor until the vacancy is filled by election or until any disability of the preceding person in the line of succession is removed.

SECTION 2. AMENDMENT. Section 44-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-02-04. Vacancy in county office - Appointment. A vacancy in any county office, other than that of county commissioner, ~~shall~~ 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 ~~shall~~ 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 duties the county commissioners may, for good cause shown, reinstate such officeholder.

Approved March 14, 1985

CHAPTER 498

HOUSE BILL NO. 1074
(Legislative Council)
(Interim Judiciary "B" Committee)

CITIZENSHIP OF NOTARIES PUBLIC

AN ACT to amend and reenact section 44-06-01 of the North Dakota Century Code, relating to the qualifications of notaries public.

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

* SECTION 1. AMENDMENT. Section 44-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-06-01. Appointment and qualification of notaries public. The secretary of state shall appoint in each county in this state ~~from among the citizens of either sex~~ one or more notaries public, who shall hold office for six years unless sooner removed by the secretary of state. Each notary shall have power and authority anywhere in the state to administer oaths and perform all other duties required of him by law. A person, to be eligible to such appointment, at the time of appointment, must have the qualifications of an elector as to age, and residence, and citizenship.

Approved February 6, 1985

* NOTE: Section 44-06-01 was also amended by section 1 of House Bill No. 1381, chapter 499.

CHAPTER 499

HOUSE BILL NO. 1381
(Representative Unhjem)
(Senator Lips)

BONDS OF NOTARIES PUBLIC

AN ACT to create and enact a new section to chapter 44-06 of the North Dakota Century Code, relating to the duty of certain sureties to notify the secretary of state concerning claims against the bonds of notaries public; and to amend and reenact sections 44-06-01 and 44-06-03 of the North Dakota Century Code, relating to the term of office and bonding requirements of notaries public.

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

* SECTION 1. AMENDMENT. Section 44-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-06-01. Appointment and qualification of notaries public. The secretary of state shall appoint in each county in this state ~~from among the citizens of either sex~~ one or more notaries public, who shall hold office for six years unless sooner removed by the secretary of state. Each notary shall have power and authority anywhere in the state to administer oaths and perform all other duties required of ~~him~~ by law. A person, to be eligible to such appointment, at the time of appointment, must have the qualifications of an elector as to age, and residence, and ~~citizenship~~.

** SECTION 2. AMENDMENT. Section 44-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-06-03. Oath and bond of notary public - Approval of bond. Each notary public, before entering upon the duties of ~~his~~ the office, shall take the oath prescribed for civil officers and give to the state a bond in the penal sum of seven thousand five hundred dollars conditioned for the faithful discharge of the duties of ~~his~~ the office. Such bond may be furnished by a surety or bonding company authorized to do business in this state or by one or more sureties, and shall be subject to approval as follows:

* NOTE: Section 44-06-01 was also amended by section 1 of House Bill No. 1074, chapter 498.

** NOTE: Section 44-06-03 was also amended by section 17 of Senate Bill No. 2116, chapter 336.

1. If it is a surety bond, it shall be subject to approval by the secretary of state, and such approval shall be without charge.
2. If it is a personal bond, it shall be subject to approval by the clerk of the district court of the county of which the notary public is a resident, or of the county to which such county is attached for judicial purposes.

SECTION 3. A new section to chapter 44-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice by surety to secretary of state of claim against bond. If a surety or bonding company giving a bond under section 44-06-03 receives a claim against that bond with respect to a notary public, that surety or bonding company shall notify the secretary of state of the outcome of said claim.

Approved March 22, 1985

CHAPTER 500

HOUSE BILL NO. 1290
(Wald)RESIDENTIAL PREFERENCE FOR PUBLIC
CONTRACTS

AN ACT to amend and reenact sections 44-08-01 and 44-08-02 of the North Dakota Century Code, relating to the preference to North Dakota contractors for public construction contracts; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 44-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-01. Preference to North Dakota bidders and, sellers, and contractors. The department of accounts and purchases office of management and budget, or any board, commission, city council, board of city commissioners, board of education, board of park commissioners, school board, or any other governing body of any political subdivision of the state, or of any state institution, in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders or, sellers, or contractors resident in North Dakota. The preference shall be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor. In specifying or purchasing goods, merchandise, supplies, or equipment to be purchased, such board shall not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, where the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit.

SECTION 2. AMENDMENT. Section 44-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-02. "Resident North Dakota bidder or, seller, and contractor" defined. The term "a resident North Dakota bidder or, seller, or contractor" when used in section 44-08-01, unless the context thereof clearly provides otherwise, shall mean a bidder or, seller,

or contractor who ~~shall~~ ~~have~~ has maintained a bona fide place of business within this state for at least one year prior to the date on which a contract was awarded.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 31, 1985

CHAPTER 501

HOUSE BILL NO. 1250
(Martinson, Conmy, Rydell, A. Hausauer, Winkelman)

STATE EMPLOYEE EXPENSE ALLOWANCES

AN ACT to amend and reenact sections 44-08-04 and 54-06-09 of the North Dakota Century Code, relating to mileage, meals, and lodging expense allowances for state employees.

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

SECTION 1. AMENDMENT. Section 44-08-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-04. Expense account - Amount allowed - Verification. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged within this state in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals which are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Upon approval of the claim, it shall be paid as an allowance at the following rates for each quarter of any twenty-four-hour period:

1. First quarter shall be from six a.m. to twelve noon and the sum shall not exceed three dollars and fifty cents. No reimbursement may be made if travel began after seven a.m.
2. Second quarter shall be from twelve noon to six p.m. and the sum shall not exceed five dollars.

3. Third quarter shall be from six p.m. to twelve midnight and the sum shall not exceed eight dollars and fifty cents.
4. Fourth quarter shall be from twelve midnight to six a.m. and the sum shall be the actual lodging expenses not to exceed ~~thirty~~ thirty-five dollars.
5. Provided, however, that the preceding four subsections shall not be applicable unless the person concerned has been out of the headquarters or normal place of employment for four hours or overnight.

Verifications of claims shall not be required for the first three quarters listed above and only a lodging receipt or the certificate of a member of the legislative assembly shall be required for the fourth quarter.

Such persons engaged in travel outside state boundaries shall receive ~~twenty-three~~ thirty dollars a day for meals and in addition thereto actual lodging expenses. Verification by receipt for such out-of-state travel expense shall be required only for lodging expense claimed.

Those persons engaged in foreign travel shall receive reimbursement for meals at a rate not to exceed two times the regular out-of-state meal allowance. Verification by receipt for such foreign travel expense shall be required only for the lodging expense claimed.

The head of any department, institution, or agency of this state may set a rate for such expenses less than those set forth in this section for any person or persons under his authority. Verification of any other type of expense not prescribed by this section shall be as prescribed by the office of the budget except no receipt shall be required for taxi or cab fares up to and including the sum of ten dollars. The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations. ~~The travel expenses of the governor, governor's personal traveling aides, lieutenant governor, judges of the supreme court, district courts, and county courts, and members of the legislative assembly shall not be limited by the expense allowance limitations prescribed by this section.~~

SECTION 2. AMENDMENT. Section 54-06-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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, shall 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~~ 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 shall 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 shall be based on the road mileage between the geographical points. Reimbursement for private airplane travel shall be calculated as follows:
 - a. If reimbursement is for one properly authorized and reimbursable passenger, reimbursement shall 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 shall 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 shall 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 shall 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, shall 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 shall not apply.

Before any allowance for any such mileage or travel expenses shall be made, the official, deputy, assistant, clerk, or other employee shall file with the director of the office of management and budget 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. The statement shall be submitted to the office of the budget for approval and shall be paid only when approved by the office of the budget.

Approved April 16, 1985

CHAPTER 502

SENATE BILL NO. 2416
(Senators Wogsland, Stenehjem, Holmberg)
(Representatives Nalewaja, Goetz)

STATE TRAVEL ADVANCES

AN ACT to amend and reenact section 44-08-04.2 of the North Dakota Century Code, relating to travel advances for state officers and employees.

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

SECTION 1. AMENDMENT. Section 44-08-04.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-04.2. Travel advances.

1. Any state agency may shall advance at the request of the agency head for employees of that agency funds to be used by officials or employees of that agency for payment of meal and lodging expenses incurred while the official or employee is traveling on official business outside of this state, provided that such out-of-state travel must be for a period planned to be in excess of five days per month, whether or not consecutive, and provided that the funds advanced do not exceed twenty-five dollars per day eighty percent of estimated expenses for the period. Travel advance warrant-checks shall be issued on vouchers signed by the chief executive officer of the agency involved. Funds advanced for meals and lodging under this section shall be accounted for as required under section 44-08-04 for out-of-state travel.
- 2- Any state agency may advance funds to be used by officials or employees of that agency for payment of meal and lodging expenses incurred while the official or employee is traveling on official business in this state, provided that such in-state travel must be for a period planned to be in excess of five days, and provided that the funds advanced do not exceed eighty percent of estimated expenses for the period. Travel advance warrant-checks shall be issued on vouchers signed by the chief executive

officer of the agency involved. Funds advanced for meals and lodging under this section shall be accounted for as required under section 44-08-04 for out-of-state travel.

- 3- 2. As used in this section, and section 44-08-04.1:
- a. "Official business outside of this state" includes travel to attend training courses, where the training is necessary to satisfy federal program requirements.
 - b. "State agency" means agencies, boards, commissions, bureaus, offices, departments, institutions, and any other state governmental entities, and specifically includes the legislative and judicial branches of state government.

Approved March 22, 1985

CHAPTER 503

SENATE BILL NO. 2464
(Dotzenrod)

PUBLIC OFFICIAL REMOVAL

AN ACT to amend and reenact sections 44-11-02, 44-11-10, and 44-11-13 of the North Dakota Century Code, relating to the number of persons who must sign a complaint seeking the gubernatorial removal of a public official, the fees of the special commissioner and payment of stenographer's expenses, and payment of costs upon dismissal and the filing of an indemnity bond with regard to gubernatorial removal of public officials.

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

SECTION 1. AMENDMENT. Section 44-11-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-11-02. Charges - How made - By whom prosecuted. The complaint or charges against any such official authorized to be removed by the governor shall be entitled in the name of the state of North Dakota and shall be filed with the governor. It may be made upon the relation of any five fifty qualified electors of the county in which the person charged is an officer, or upon the relation of ten percent of the qualified electors voting at the preceding general election for the office of governor in that political subdivision or district in which the person charged is an officer, whichever is least, or by the state's attorney of such county. Such complaint and charges shall be filed by the attorney general when directed to do so by the governor. When the officer sought to be removed is other than the state's attorney, the state's attorney or other competent attorney, upon request of the governor, shall appear and prosecute. When the proceedings are brought to remove the state's attorney, the governor shall request the attorney general or other competent attorney to appear on behalf of the state and prosecute such proceedings.

SECTION 2. AMENDMENT. Section 44-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-11-10. Fees of special commissioner - Stenographer - Witnesses. The fees of the special commissioner provided for by this chapter shall

be ~~six~~ one hundred dollars per day, and in addition thereto, he shall receive his mileage from his residence to the place of trial the same as is allowed by law to sheriffs. He shall have power to ~~may~~ employ a stenographer, ~~who shall be paid fifteen cents per folio for the original transcript of testimony and five cents per folio for copies required and pay the expenses of the stenographer.~~ Such expenses shall be itemized by the commissioner and filed with his report and findings and audited and allowed by the governor. Witnesses giving testimony before such commissioner, the number to be limited by the commissioner, shall be allowed the same fees as witnesses in district court. In proceedings to remove a county officer, such fees shall be paid by the county upon allowance by the board of county commissioners in the same manner as other claims against the county, and if a municipal or township officer, then by the city council, board of city commissioner, or board of township supervisors, in the same manner as other claims against the municipality are paid.

SECTION 3. AMENDMENT. Section 44-11-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-11-13. Costs on dismissal of charges - Bond. When charges are preferred against any of the officers mentioned in section 44-11-01 by qualified voters electors other than the state's attorney or attorney general, as provided in section 44-11-02, and upon such hearing it shall appear that such charges were not preferred in good faith, then all of the costs of the proceedings under this chapter, not exceeding the sum of ~~three~~ five hundred dollars, in the discretion of the governor, may be taxed to the persons making such charges. When such charges are made by such relators there shall be filed, together with such charges, a good and sufficient indemnity bond in the sum of ~~three~~ five hundred dollars, to be approved by the governor, binding such relators to the payment of such costs upon the failure to maintain such charges as herein provided.

Approved April 11, 1985

PARTNERSHIPS

CHAPTER 504

SENATE BILL NO. 2183
(Committee on Industry, Business and Labor)
(At the request of the Commission on Uniform State Laws)

UNIFORM LIMITED PARTNERSHIP ACT

AN ACT to adopt the Uniform Limited Partnership Act (1976), relating to limited partnerships; to amend and reenact sections 45-12-01 and 45-12-04 of the North Dakota Century Code, relating to existing limited partnerships and citation of partnership acts; and to repeal chapter 45-10 of the North Dakota Century Code, relating to the Uniform Limited Partnership Act.

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

SECTION 1. (101) Definitions. As used in sections 1 through 62, unless the context otherwise requires:

1. "Certificate of limited partnership" means the certificate referred to in section 8, and the certificate as amended.
2. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.
3. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 26.
4. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.
5. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

6. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and named in the certificate of limited partnership as a limited partner.
7. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.
8. "Partner" means a general or limited partner.
9. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.
10. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.
11. "Person" means a natural person, partnership, limited partnership, trust, estate, association, or corporation.
12. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 2. (102) Name. The name of each limited partnership as set forth in its certificate of limited partnership:

1. Must contain without abbreviation the words "limited partnership".
2. May not contain the name of a limited partner unless:
 - a. It is also the name of a general partner or the corporate name of a corporate general partner; or
 - b. The business of the limited partnership had been carried on under that name before the admission of that limited partner.
3. May not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership.
4. May not contain the word "corporation", "company", or "incorporated", or any abbreviation of those words.
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.

SECTION 3. (103) Reservation of name.

1. The exclusive right to the use of a name may be reserved by:
 - a. Any person intending to organize a limited partnership under sections 1 through 62 and to adopt that name.
 - b. Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name.
 - c. Any foreign limited partnership intending to register in this state and adopt that name.
 - d. Any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.
2. The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

SECTION 4. (104) Specified office and agent. Each limited partnership shall continuously maintain in this state:

1. An office, which may but need not be a place of its business in this state, at which shall be kept the records required by section 5 to be maintained.
2. An agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

SECTION 5. (105) Records to be kept. Each limited partnership shall keep at the office referred to in subsection 1 of section 4 the following:

1. A current list of the full name and last known business address of each partner set forth in alphabetical order.

2. A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed.
3. Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years.
4. Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years. Those records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

SECTION 6. (106) Nature of business. A limited partnership may carry on any business that a partnership without limited partners may carry on except banking or insurance.

SECTION 7. (107) Business transactions of partner with partnership. Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

SECTION 8. (201) Certificate of limited partnership.

1. In order to form a limited partnership, two or more persons must execute a certificate of limited partnership. The certificate must be filed in the office of the secretary of state and set forth:
 - a. The name of the limited partnership.
 - b. The general character of its business.
 - c. The address of the office and the name and address of the agent for service of process required to be maintained by section 4.
 - d. The name and the business address of each partner, specifying separately the general partners and limited partners.
 - e. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future.
 - f. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made.

- g. Any power of a limited partner to grant the right to become a limited partner to an assignee of any part of the limited partner's partnership interest, and the terms and conditions of the power.
 - h. If agreed upon, the time at which or the events on the happening of which a partner may terminate membership in the limited partnership and the amount of, or the method of determining, the distribution to which the partner may be entitled respecting the partner's partnership interest, and the terms and conditions of the termination and distribution.
 - i. Any right of a partner to receive distributions of property, including cash from the limited partnership.
 - j. Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution.
 - k. Any time at which or events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.
 - l. Any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner.
 - m. Any other matters the partners determine to include therein.
2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

SECTION 9. (202) Amendment to certificate.

- 1. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate must set forth all of the following:
 - a. The name of the limited partnership.
 - b. The date of filing the certificate.
 - c. The amendment to the certificate.
- 2. An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be

filed within thirty days after the happening of any of the following events:

- a. A change in the amount or character of the contribution of any partner, or in any partner's obligation to make a contribution.
 - b. The admission of a new partner.
 - c. The withdrawal of a partner.
 - d. The continuation of the business under section 47 after an event of withdrawal of a general partner.
 - e. A change of office or an agent.
3. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, but an amendment to show a change of address of a limited partner need be filed only once every twelve months.
4. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.
5. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection 2 if the amendment is filed within the thirty-day period specified in subsection 2.

SECTION 10. (203) Cancellation of certificate. A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation must be filed in the office of the secretary of state and set forth all of the following:

1. The name of the limited partnership.
2. The date of filing of its certificate of limited partnership.
3. The reason for filing the certificate of cancellation.
4. The effective date, which must be a date certain, of cancellation if it is not to be effective upon the filing of the certificate.
5. Any other information the general partners filing the certificate determine.

SECTION 11. (204) Execution of certificates.

1. Each certificate required by sections 8 through 19 to be filed in the office of the secretary of state must be executed in the following manner:
 - a. An original certificate of limited partnership must be signed by all partners named therein.
 - b. A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new partner or whose contribution is described as having been increased.
 - c. A certificate of cancellation must be signed by all general partners.
2. Any person may sign a certificate by an attorney in fact, but a power of attorney to sign a certificate relating to the admission, or increased contribution, of a partner must specifically describe the admission or increase.
3. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

SECTION 12. (205) Amendment or cancellation by judicial act.

If a person required by section 11 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the district court to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.

SECTION 13. (206) Filing in office of secretary of state.

1. A signed copy of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall endorse on the copy the word "Filed" and the day, month, and year of the filing and shall file the copy in the office of the secretary of state.

2. Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership is amended as set forth therein, and upon the effective date of a certificate of cancellation, or a judicial decree thereof, the certificate of limited partnership is canceled.

SECTION 14. Renewal of certificate - Filing with secretary of state - Cancellation. Any certificate of limited partnership or registration of foreign limited partnership filed under sections 1 through 62 of this Act must be renewed every five years from the date of the initial filing. Limited partnerships existing prior to July 1, 1985, must file the statement of renewal by July 1, 1987, and every five years thereafter. The statement of renewal must be executed by the limited partnership or foreign limited partnership on forms prescribed and furnished by the secretary of state and sent to the address of the registered office at least sixty days prior to the deadline for filing. The statement must include the name of the limited partnership or foreign limited partnership, the state or country of organization, the address of the registered office and the name of the registered agent, and a statement that the limited partnership or foreign limited partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not conform, the secretary of state shall promptly return the statement to the limited partnership or the foreign limited partnership for any necessary corrections, and the certificate of limited partnership or registration of foreign limited partnership must be canceled if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any limited partnership or foreign limited partnership fails to file the statement of renewal when due, the secretary of state shall cancel the certificate of limited partnership or registration of foreign limited partnership and shall mail notice of cancellation to the address of the registered office.

SECTION 15. Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a limited partnership, seventy-five dollars.
2. Filing a limited partnership amendment, twenty-five dollars.
3. Filing a limited partnership dissolution, twenty-five dollars.
4. Filing a limited partnership cancellation, twenty-five dollars.
5. Filing a reservation of name, ten dollars.

6. Filing a statement of renewal of a limited partnership or renewal of registration of foreign limited partnership, twenty-five dollars.
7. Filing a registration of foreign limited partnership, seventy-five dollars.
8. Filing a certified statement of amendment of foreign limited partnership, twenty-five dollars.
9. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
10. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
11. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.

SECTION 16. Duties of the secretary of state. The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. All documents filed with the secretary of state pursuant to sections 1 through 62 of this Act must be retained in that office until they have been committed to microcopy, at which time the documents may be returned to the limited partnership or foreign limited partnership.

SECTION 17. (207) Liability for false statement in certificate. If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from all of the following:

1. Any person who executes the certificate, or causes another to execute it on that person's behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed.
2. Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under section 12.

SECTION 18. (208) Notice. The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated therein as limited partners are limited partners, but it is not notice of any other fact.

SECTION 19. (209) Delivery of certificates to limited partners. Upon the filing by the secretary of state pursuant to section 13 of a certificate, the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

SECTION 20. (301) Admission of additional limited partners.

1. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

a. In the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners.

b. In the case of an assignee of a partnership interest of a partner who has the power, as provided in section 45, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

2. In each case under subsection 1, the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

SECTION 21. (302) Voting. Subject to section 22, the partnership agreement may grant to all or a specified group of the limited partners the right to vote, on a per capita or other basis, upon any matter.

SECTION 22. (303) Liability to third parties.

1. Except as provided in subsection 4, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, the limited partner is liable only to persons who transact business with the limited partnership with actual knowledge of the limited partner's participation in control.

2. A limited partner does not participate in the control of the business within the meaning of subsection 1 solely by doing one or more of the following:
 - a. Being a contractor for or an agent or employee of the limited partnership or of a general partner.
 - b. Consulting with and advising a general partner with respect to the business of the limited partnership.
 - c. Acting as surety for the limited partnership.
 - d. Approving or disapproving an amendment to the partnership agreement.
 - e. Voting on one or more of the following matters:
 - (1) The dissolution and winding up of the limited partnership.
 - (2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business.
 - (3) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business.
 - (4) A change in the nature of the business.
 - (5) The removal of a general partner.
3. The enumeration in subsection 2 does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.
4. A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by subsection 2 of section 2, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

SECTION 23. (304) Person erroneously believing oneself limited partner.

1. Except as provided in subsection 2, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by

reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, the person:

- a. Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
 - b. Withdraws from future equity participation in the enterprise.
2. A person who makes a contribution of the kind described in subsection 1 is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate is filed to show withdrawal, or before an appropriate certificate is filed to show the person's status as a limited partner and, in the case of an amendment, after expiration of the thirty-day period for filing an amendment relating to the person as a limited partner under section 9, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

SECTION 24. (305) Information. Each limited partner has the right to:

1. Inspect and copy any of the partnership records required to be maintained by section 5.
2. Obtain from the general partners from time to time upon reasonable demand each of the following:
 - a. True and full information regarding the state of the business and financial condition of the limited partnership.
 - b. Promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year.
 - c. Other information regarding the affairs of the limited partnership as is just and reasonable.

SECTION 25. (401) Admission of additional general partners. After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific written consent of each partner.

SECTION 26. (402) Events of withdrawal. Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

1. The general partner withdraws from the limited partnership as provided in section 35.
2. The general partner ceases to be a member of the limited partnership as provided in section 43.
3. The general partner is removed as a general partner in accordance with the partnership agreement.
4. Unless otherwise provided in the certificate of limited partnership, the general partner:
 - a. Makes an assignment for the benefit of creditors.
 - b. Files a voluntary petition in bankruptcy.
 - c. Is adjudicated a bankrupt or insolvent.
 - d. Files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.
 - e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature.
 - f. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties.
5. Unless otherwise provided in the certificate of limited partnership, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or stayed or, within ninety days after the expiration of a stay, the appointment is not vacated.
6. In the case of a general partner who is a natural person:
 - a. The general partner's death.
 - b. The entry by a court of competent jurisdiction adjudicating the general partner incompetent to manage the general partner's person or estate.

7. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee.
8. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership.
9. In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter.
10. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

SECTION 27. (403) General powers and liabilities. Except as provided in sections 1 through 62 or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

SECTION 28. (404) Contributions by general partner. A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

SECTION 29. (405) Voting. The partnership agreement may grant to all or certain identified general partners the right to vote, on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

SECTION 30. (501) Form of contribution. The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

SECTION 31. (502) Liability for contribution.

1. Except as provided in the certificate of limited partnership, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability, or any

other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the certificate of limited partnership, of the stated contribution that has not been made.

2. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of sections 1 through 62 may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, after the filing of the certificate of limited partnership or an amendment thereto which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

SECTION 32. (503) Sharing of profits and losses. The profits and losses of a limited partnership must be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses must be allocated on the basis of the value, as stated in the certificate of limited partnership, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

SECTION 33. (504) Sharing of distributions. Distributions of cash or other assets of a limited partnership must be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions must be made on the basis of the value, as stated in the certificate of limited partnership, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

SECTION 34. (601) Interim distributions. Except as provided in sections 34 through 41, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up thereof:

1. To the extent and at the times or upon the happening of the events specified in the partnership agreement; and
2. If any distribution constitutes a return of any part of the partner's contribution under subsection 2 of section 38, to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.

SECTION 35. (602) Withdrawal of general partner. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the general partner.

SECTION 36. (603) Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the certificate of limited partnership and in accordance with the partnership agreement. If the certificate does not specify the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at the general partner's address on the books of the limited partnership at its office in this state.

SECTION 37. (604) Distribution upon withdrawal. Except as provided in sections 34 through 41, upon withdrawal any withdrawing partner is entitled to receive any distribution to which the withdrawing partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the limited partnership as of the date of withdrawal based upon the withdrawing partner's right to share in distributions from the limited partnership.

SECTION 38. (605) Distribution in kind. Except as provided in the certificate of limited partnership, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership.

SECTION 39. (606) Right to distribution. At the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

SECTION 40. (607) Limitations on distribution. A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

SECTION 41. (608) Liability upon return of contribution.

1. If a partner has received the return of any part of the partner's contribution without violation of the partnership agreement or sections 1 through 62, the partner is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.
2. If a partner has received the return of any part of the partner's contribution in violation of the partnership agreement or sections 1 through 62, the partner is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.
3. A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the value, as set forth in the certificate of limited partnership, of the partner's contribution that has not been distributed to the partner.

SECTION 42. (701) Nature of partnership interest. A partnership interest is personal property.

SECTION 43. (702) Assignment of partnership interest. Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all the partner's partnership interest.

SECTION 44. (703) Rights of creditor. On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. Sections 1 through 62 do not deprive any partner of the benefit of any exemption laws applicable to the partner's partnership interest.

SECTION 45. (704) Right of assignee to become limited partner.

1. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:
 - a. The assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership; or
 - b. All other partners consent.
2. An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and sections 1 through 62. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make and return contributions as provided in sections 34 through 41. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from the certificate of limited partnership.
3. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under sections 17 and 31.

SECTION 46. (705) Power of estate of deceased or incompetent partner. If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner to be incompetent to manage the partner's person or property, the partner's executor, administrator guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

SECTION 47. (801) Nonjudicial dissolution. A limited partnership is dissolved and its affairs must be wound up upon the happening of the first to occur of the following:

1. At the time or upon the happening of events specified in the certificate of limited partnership.
2. Written consent of all partners.
3. An event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be

wound up by reason of any event of withdrawal, if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired.

4. Entry of a decree of judicial dissolution under section 48.

SECTION 48. (802) Judicial dissolution. On application by or for a partner, the district court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

SECTION 49. (803) Winding up. Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the district court may wind up the limited partnership's affairs upon application of any partner or the partner's legal representative or assignee.

SECTION 50. (804) Distribution of assets. Upon the winding up of a limited partnership, the assets must be distributed as follows:

1. To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section 34 or 37.
2. Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 34 or 37.
3. Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

SECTION 51. (901) Law governing. Subject to the Constitution of North Dakota, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

SECTION 52. (902) Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state.
2. The state and date of its formation.
3. The general character of the business it proposes to transact in this state.
4. The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state.
5. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
6. The address of the principal office of the foreign limited partnership.

The application must be accompanied by a certificate of identification, existence, and status of a foreign limited partnership, duly certified by the proper officer of the state or country under the laws of which it is organized.

SECTION 53. (903) Filing of registration. If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary of state shall:

1. Endorse on the application the word "Filed", and the month, day, and year of the filing.
2. File the application in the office of the secretary of state.

SECTION 54. (904) Name. A foreign limited partnership may register with the secretary of state under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

SECTION 55. (905) Changes and amendments. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.

SECTION 56. (906) Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transactions of business in this state.

SECTION 57. (907) Transaction of business without registration.

1. A foreign limited partnership transacting business in this state may not maintain any action or proceeding in any court of this state until it has registered in this state.
2. The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action or proceeding in any court of this state.
3. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.
4. A foreign limited partnership, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state.
5. Without excluding other activities which may constitute transacting business in this state, a foreign limited partnership shall not be considered to be transacting business in this state, for the purposes of this Act only, by reason of carrying on in this state any one or more of the following activities:
 - a. 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.
 - b. Holding meetings of its partners or carrying on other activities concerning its internal affairs.
 - c. Maintaining bank accounts.
 - d. 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.

- e. Effecting sales through independent contractors.
- f. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.
- g. Creating evidences of debt, mortgages, or liens on real or personal property.
- h. Securing or collecting debts or enforcing any rights in property securing the same.
- i. Transacting any business in interstate commerce.
- j. 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 subsection does not establish a standard for activities which may or may not subject a foreign limited partnership to taxation or service of process.

SECTION 58. (908) Action by secretary of state. The secretary of state may revoke the registration of a foreign limited partnership for transacting business in this state in violation of sections 52 through 58, or that has failed to file a renewal statement as required by section 14 of this Act. The secretary of state may not revoke the registration of a foreign limited partnership unless the secretary of state has given the foreign limited partnership not less than sixty days' notice by mail addressed to its registered office in this state and the principal office of record, and the foreign limited partnership has failed to remedy the deficiency prior to revocation.

SECTION 59. (1001) Right of action. A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

SECTION 60. (1002) Proper plaintiff. In a derivative action, the plaintiff must be a partner at the time of bringing the action, and at the time of the transaction of which the plaintiff complains or the plaintiff's status as a partner had devolved upon the plaintiff by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

SECTION 61. (1003) Pleading. In a derivative action, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

SECTION 62. (1004) Expenses. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited partnership the remainder of those proceeds received by the plaintiff.

SECTION 63. AMENDMENT. Section 45-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-12-01. Provisions for existing limited partnerships.

1. A limited or special partnership formed under any statute of this state prior to July 1, 1959, may become a limited partnership under this title by complying with the provisions of section 45-10-02, provided the certificate sets forth:
 - a- The amount of the original contribution of each limited partner, and the time when the contribution was made; and
 - b- That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.
- 2- A limited or special partnership formed under any statute of this state prior to July 1, 1959, until or unless it becomes a limited partnership under chapter 45-10, shall continue sections 1 through 62, continues to be governed by the provisions of chapter 45-03 of the North Dakota Revised Code of 1943, except that such through June 30, 1986, but the partnership shall may not be renewed unless so provided in the original agreement.
2. A limited partnership formed under former chapter 45-10 prior to July 1, 1985, until or unless it becomes a limited partnership under sections 1 through 62, continues to be governed by the provisions of former chapter 45-10, through June 30, 1986, but the partnership may not be renewed unless so provided in the original agreement.
3. After June 30, 1986, sections 1 through 62 apply to all existing limited partnerships formed under any law of this state providing for formation of limited partnerships. All provisions of partnership agreements that may be included in the partnership agreements under sections 1 through 62 of this Act remain in effect. All provisions of the partnership agreements that are inconsistent with sections 1 through 62 of this Act cease to be effective on July 1, 1986. Any provisions required by sections 1

through 62 of this Act to be contained in the partnership agreement that do not appear in the partnership agreement are read into them as a matter of law.

SECTION 64. AMENDMENT. Section 45-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-12-04. Citation. Chapters 45-05 through 45-09 may be cited as the "Uniform Partnership Act", and chapter 45-10 may be cited as the "Uniform Limited Partnership Act".

SECTION 65. REPEAL. Chapter 45-10 of the North Dakota Century Code is hereby repealed.

Approved March 28, 1985

CHAPTER 505

SENATE BILL NO. 2134
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

FICTITIOUS PARTNERSHIP NAMES

AN ACT to create and enact two new sections to chapter 45-11 of the North Dakota Century Code, relating to fictitious partnership names; and to amend and reenact sections 45-11-01, 45-11-02, 45-11-03, 45-11-04, 45-11-05, 45-11-06, 45-11-07, and 45-11-08 of the North Dakota Century Code, relating to fictitious partnership names.

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

SECTION 1. AMENDMENT. Section 45-11-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-01. Use of fictitious partnership name---Certificate---Filing--
-Publication. Except as otherwise provided in section 45-11-03,
every Every partnership transacting business in this state under a
fictitious name, or a designation not showing the names of the
persons interested as partners in such business, must file a
fictitious name certificate with the secretary of state a
certificate stating the names in full of all the members of such
partnership and their places of residence, and must publish the same
once in a newspaper published in the county in which the principal
place of business of the partnership is located, if there is one,
and if there is none in such county, then in a newspaper published
in an adjoining county, 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 chapter 45-10,
and as otherwise provided in section 45-11-03, is not required to
file a fictitious name certificate pursuant to this section.

The fictitious name:

1. May not contain the word "corporation", "company",
"incorporated", or "limited", or an abbreviation of one of
such words. This 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.

SECTION 2. AMENDMENT. Section 45-11-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-02. How certificate executed. A certificate filed with the secretary of state as provided in section 45-11-01 must be signed by the partners and acknowledged before some officer authorized to take acknowledgments of conveyances of real property. The certificate must state the fictitious name, the names in full of all the members of the partnership and their places of residence, and the address of the principal place of business.

SECTION 3. AMENDMENT. Section 45-11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-03. Foreign partnership permitted to use fictitious name. A commercial partnership established and transacting business in a place without the United States may use in this state the partnership name used by it there, without filing the certificate ~~or making the publication~~ prescribed in section 45-11-01, although it is fictitious or does not show the names of the persons interested as partners in such business.

SECTION 4. AMENDMENT. Section 45-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-04. Penalty for unlawful use of fictitious name. Persons doing business as partners contrary to the provisions of section 45-11-01 shall not maintain an action on, or an account of, any contracts made or transactions had in their partnership name in any court of this state until they have filed the certificate ~~and made the publication~~ required by section 45-11-01. If such partners shall comply with such provisions at any time, they thereupon shall have the right to maintain an action on all such partnership contracts and transactions entered into prior to, as well as after, such compliance.

SECTION 5. AMENDMENT. Section 45-11-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-05. New certificate required when members changed. Whenever there is a change in the 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 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 ~~and a new publication made~~ as required by this chapter upon the formation of such partnership.

SECTION 6. AMENDMENT. Section 45-11-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-06. Duty of secretary of state regarding certificates of partnership fictitious name certificate. The secretary of state must keep a register an alphabetical file of the fictitious names of firms and persons mentioned in the certificates filed with him pursuant to this chapter, entering in alphabetical order the name of every such partnership and of each partner therein. All documents filed with the secretary of state pursuant to this chapter must be retained in that office until they have been committed to microcopy, at which time the documents may be returned to the partnership.

SECTION 7. AMENDMENT. Section 45-11-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-07. Certified copy used as evidence. A copy of the entry of the secretary of state relating to a partnership certificate, made as directed in section 45-11-01, when certified by him, and an affidavit of publication made as prescribed in title 31, is presumptive evidence of the facts stated therein.

SECTION 8. AMENDMENT. Section 45-11-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-08. Unlawful use of fictitious partnership name. It shall be unlawful for any person to transact business in the name of a person, as a partner, who is not interested in his firm, or to transact business under a firm name in which the designation "and company" or "& Co." is used without representing an actual partner, except in cases in which the continued use of a copartnership name is authorized by law.

SECTION 9. A new section to chapter 45-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Principal place of business. Each partnership which files a fictitious name certificate shall have and continuously maintain on file in the office of the secretary of state, an address of the principal place of business, which must also serve as a mailing address. The address of the principal place of business may be changed by submitting a statement executed by the partnership with a filing fee of ten dollars. The statement must contain the name of the partnership, the state or country of organization, and the new address of the principal place of business.

SECTION 10. A new section to chapter 45-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Renewal. Any fictitious name certificate filed under this chapter must be renewed every five years from the date of the

initial filing, except that those filings existing prior to July 1, 1985, must be required to file the statement of renewal by July 1, 1987, and then every five years thereafter. The statement of renewal shall be executed by the partnership on forms prescribed and furnished by the secretary of state which are sent to the address of the principal place of business at least sixty days prior to the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, the names and addresses of all members, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the same. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the same to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any partnership fails to file the statement of renewal when due, the fictitious name certificate must be cancelled by the secretary of state and notice of such cancellation must be mailed to the address of the principal place of business.

Approved March 22, 1985

PRINTING LAWS

CHAPTER 506

SENATE BILL NO. 2219
(Committee on State and Federal Government)
(At the request of the Secretary of State)

SESSION LAWS COPYRIGHT

AN ACT to amend and reenact section 46-03-11 of the North Dakota Century Code, relating to the copyright of the North Dakota session laws.

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

SECTION 1. AMENDMENT. Section 46-03-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-03-11. Publication of session laws and pocket supplements. The secretary of state and the legislative council shall correct ministerial or clerical errors and supervise the publication of the session laws and pocket part supplements to this code in a manner and form prescribed by the legislative council, correlating each year's laws with this code. The secretary of state shall secure a copyright of the session laws of each session of the legislative assembly before the same are distributed for the exclusive use and benefit of the state.

Notice of the copyright procurement shall be printed at an appropriate place in the session laws.

Approved March 22, 1985

PROPERTY

CHAPTER 507

HOUSE BILL NO. 1157
(Representatives Nalewaja, R. Berg)
(Senator Mushik)

LANDLORD-TENANT RIGHTS

AN ACT to amend and reenact subsection 1 of section 47-16-07.1 and sections 47-16-15 and 47-16-30.1 of the North Dakota Century Code, relating to security deposits, notice to terminate tenancy, and disposition of abandoned property by landlord.

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

SECTION 1. AMENDMENT. Subsection 1 of section 47-16-07.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in any a federally insured interest-bearing savings or passbook account established solely for security deposits. The security deposit and any interest accruing ~~thereon shall~~ on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A ~~landlord~~ lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent.

SECTION 2. AMENDMENT. Section 47-16-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-15. Notice of termination of lease. A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in section 47-16-06 at the end of the term implied by law, unless one of the parties gives notice to the other of his an intention to terminate the same lease, at least as long before the expiration ~~thereof of the lease~~ as the term of the hiring itself, not exceeding thirty days; ~~provided, however, that as to.~~ In tenancies from month to month, and unless the parties have otherwise agreed in writing to a longer notice period or a different notice time, either of the parties party may terminate the same tenancy by giving at least thirty days' written notice thereof at any time, and

~~the. The rent shall be~~ is due and payable to and including the date of termination, ~~and provided further that if.~~ If a landlord changes the terms of the lease pursuant to section 47-16-07, the tenant may terminate the lease at the end of the month by giving at least twenty-five days' notice.

SECTION 3. AMENDMENT. Section 47-16-30.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-30.1. Abandoned property - Disposal by lessor. Notwithstanding the provisions of any other law, property ~~Property~~ with a total estimated value of less not more than one five hundred dollars which is left on the premises of a leased dwelling fifteen ~~thirty~~ days after the tenant has vacated the premises after the expiration of the lease term may be retained by the lessor ~~of that property~~ and disposed of without legal process. The lessor is also ~~entitled~~ to the proceeds from the sale of ~~this~~ the property. The lessor may recover, from the lessee's security deposit, any storage and moving expenses in excess of the proceeds from the sale incurred in disposing of the property.

Approved March 27, 1985

CHAPTER 508

HOUSE BILL NO. 1145
(Committee on Social Services and Veterans Affairs)
(At the request of the Commission on Uniform State Laws)

UNIFORM TRANSFERS TO MINORS ACT

AN ACT to adopt the Uniform Transfers to Minors Act, relating to transfer of property to custodians for the benefit of minors; to amend and reenact subsection 45 of section 30.1-01-06 of the North Dakota Century Code, relating to definition of trusts under the Uniform Probate Code; and to repeal chapter 47-24 of the North Dakota Century Code, relating to the Uniform Gifts to Minors Act.

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

SECTION 1. Definitions. In sections 1 through 22:

1. "Adult" means an individual who has attained the age of twenty-one years.
2. "Benefit plan" means an employer's plan for the benefit of an employee or partner.
3. "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
4. "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
5. "Court" means the county court.
6. "Custodial property" means:
 - a. Any interest in property transferred to a custodian under sections 1 through 22; and
 - b. The income from and proceeds of that interest in property.

7. "Custodian" means a person so designated under section 9 or a successor or substitute custodian designated under section 18.
8. "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
9. "Legal representative" means an individual's personal representative or conservator.
10. "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
11. "Minor" means an individual who has not attained the age of twenty-one years.
12. "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.
13. "State" includes the Commonwealth of Puerto Rico.
14. "Transfer" means a transaction that creates custodial property under section 9.
15. "Transferor" means a person who makes a transfer under sections 1 through 22.
16. "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

SECTION 2. Scope and jurisdiction.

1. Sections 1 through 22 apply to a transfer that refers to sections 1 through 22 in the designation under subsection 1 of section 9 by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to sections 1 through 22 despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.
2. A person designated as custodian under sections 1 through 22 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

3. A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar Act, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

SECTION 3. Nomination of custodian.

1. A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.
2. A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under subsection 1 of section 9.
3. The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 9. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 9.

SECTION 4. Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 9.

SECTION 5. Transfer authorized by will or trust.

1. A personal representative or trustee may make an irrevocable transfer pursuant to section 9 to a custodian for the benefit of a minor as authorized in the governing will or trust.

2. If the testator or settlor has nominated a custodian under section 3 to receive the custodial property, the transfer must be made to that person.
3. If the testator or settlor has not nominated a custodian under section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under subsection 1 of section 9.

SECTION 6. Other transfer by fiduciary.

1. Subject to subsection 3, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 9, in the absence of a will or under a will or trust that does not contain an authorization to do so.
2. Subject to subsection 3, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 9.
3. A transfer under subsection 1 or 2 may be made only if:
 - a. The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;
 - b. The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and
 - c. The transfer is authorized by the court if it exceeds ten thousand dollars in value.

SECTION 7. Transfer by obligor.

1. Subject to subsections 2 and 3, a person not subject to section 5 or 6 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 9.
2. If a person having the right to do so under section 3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.
3. If no custodian has been nominated under section 3, or all persons so nominated as custodian die before the transfer

or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

SECTION 8. Receipt for custodial property. A written acknowledgement of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to sections 1 through 22.

SECTION 9. Manner of creating custodial property and effecting transfer - Designation of initial custodian - Control.

1. Custodial property is created and a transfer is made whenever:

a. An uncertificated security or a certificated security in registered form is either:

(1) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act"; or

(2) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection 2;

b. Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act";

c. The ownership of a life or endowment insurance policy or annuity contract is either:

(1) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act"; or

(2) Assigned in a writing delivered to an adult other than the transferor, or to a trust company, whose name in the assignment is followed in substance

- by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act";
- d. An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act";
- e. An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act";
- f. A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:
- (1) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act"; or
- (2) Delivered to an adult other than the transferor, or to a trust company, endorsed to that person followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act"; or
- g. An interest in any property not described in subdivisions a through f is transferred to an adult other than the transferor, or to a trust company, by a written instrument in substantially the form set forth in subsection 2.
2. An instrument in the following form satisfies the requirements of paragraph 2 of subdivision a and subdivision g of subsection 1:

"TRANSFER UNDER THE NORTH DAKOTA
UNIFORM TRANSFERS TO MINORS ACT

I, ----- (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ----- (name of custodian), as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: -----

(Signature)
----- (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the North Dakota Uniform Transfers to Minors Act.

Dated: -----
-----"

(Signature of Custodian)

3. A transferor shall place the custodian in control of the custodial property as soon as practicable.

SECTION 10. Single custodianship. A transfer may be made only for one minor and only one person may be the custodian. All custodial property held under sections 1 through 22 by the same custodian for the benefit of the same minor constitutes a single custodianship.

SECTION 11. Validity and effect of transfer.

1. The validity of a transfer made in a manner prescribed in sections 1 through 22 is not affected by:

- a. Failure of the transferor to comply with subsection 3 of section 9 concerning possession and control;
- b. Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under subsection 1 of section 9; or
- c. Death or incapacity of a person nominated under section 3 or designated under section 9 as custodian or the disclaimer of the office by that person.

2. A transfer made pursuant to section 9 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in sections 1 through 22, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in sections 1 through 22.

3. By making a transfer, the transferor incorporates in the disposition all the provisions of sections 1 through 22, and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in sections 1 through 22.

SECTION 12. Care of custodial property.

1. A custodian shall:

- a. Take control of custodial property;
- b. Register or record title to custodial property if appropriate; and
- c. Collect, hold, manage, invest, and reinvest custodial property.

2. In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

3. A custodian may invest in or pay premiums on life insurance or endowment policies on:

- a. The life of the minor only if the minor or the minor's estate is the sole beneficiary; or
- b. The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

4. A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as custodian for -----"

(name of minor) under the North Dakota Uniform Transfers to Minors Act".

5. A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

SECTION 13. Powers of custodian.

1. A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.
2. This section does not relieve a custodian from liability for breach of section 12.

SECTION 14. Use of custodial property.

1. A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:
 - a. The duty or ability of the custodian personally or of any other person to support the minor; or
 - b. Any other income or property of the minor which may be applicable or available for that purpose.
2. On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.
3. A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

SECTION 15. Custodian's expense, compensation, and bond.

1. A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.
2. Except for one who is a transferor under section 4, a custodian has a noncumulative election during each

calendar year to charge reasonable compensation for services performed during that year.

3. Except as provided in subsection 6 of section 18, a custodian need not give a bond.

SECTION 16. Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

1. The validity of the purported custodian's designation;
2. The propriety of, or the authority under sections 1 through 22 for, any act of the purported custodian;
3. The validity or propriety under sections 1 through 22 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
4. The propriety of the application of any property of the minor delivered to the purported custodian.

SECTION 17. Liability to third persons.

1. A claim based on (a) a contract entered into by a custodian acting in a custodial capacity, (b) an obligation arising from the ownership or control of custodial property, or (c) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.
2. A custodian is not personally liable:
 - a. On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
 - b. For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.
3. A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

SECTION 18. Renunciation, resignation, death, or removal of
custodian - Designation of successor custodian.

1. A person nominated under section 3 or designated under section 9 as custodian may decline to serve by delivering a valid disclaimer under chapter 47-11.1 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 3, the person who made the nomination may nominate a substitute custodian under section 3; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subsection 1 of section 9. The custodian so designated has the rights of a successor custodian.
2. A custodian at any time may designate a trust company or an adult other than a transferor under section 4 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.
3. A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.
4. If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection 2, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.
5. A custodian who declines to serve under subsection 1 or resigns under subsection 3, or the legal representative of

a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

6. A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 4 or to require the custodian to give appropriate bond.

SECTION 19. Accounting by and determination of liability of custodian.

1. A minor who has attained the age of fourteen years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 17 to which the minor or the minor's legal representative was a party.
2. A successor custodian may petition the court for an accounting by the predecessor custodian.
3. The court, in a proceeding under sections 1 through 22 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.
4. If a custodian is removed under subsection 6 of section 18, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

SECTION 20. Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

1. The minor's attainment of twenty-one years of age with respect to custodial property transferred under section 4 or 5;

2. The minor's attainment of age eighteen with respect to custodial property transferred under section 6 or 7; or
3. The minor's death.

SECTION 21. Applicability. Sections 1 through 22 apply to a transfer within the scope of section 2 made after June 30, 1985, if:

1. The transfer purports to have been made under the North Dakota Uniform Gifts to Minors Act; or
2. The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of sections 1 through 22 is necessary to validate the transfer.

SECTION 22. Effect on existing custodianships.

1. Any transfer of custodial property as now defined in sections 1 through 22 made before July 1, 1985, is validated notwithstanding that there was no specific authority in the North Dakota Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.
2. Sections 1 through 22 apply to all transfers made before July 1, 1985, in a manner and form prescribed in the North Dakota Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1985.
3. Sections 1 and 20 with respect to the age of a minor for whom custodial property is held under sections 1 through 22 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of eighteen before July 1, 1985.

SECTION 23. AMENDMENT. Subsection 45 of section 30.1-01-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45. "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, sections 1 through 22 of this Act, 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 24. REPEAL. Chapter 47-24 of the North Dakota Century Code is hereby repealed.

Approved March 31, 1985

CHAPTER 509

HOUSE BILL NO. 1117
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

TRADE NAME REGISTRATION

AN ACT to amend and reenact sections 47-25-02 and 47-25-04 of the North Dakota Century Code, relating to trade names.

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

SECTION 1. AMENDMENT. Section 47-25-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25-02. Trade name - Registration - Statement - Contents - Change of registration. Any person who engages in business in this state under a trade name may register with the secretary of state for purposes of registering a trade name, a verified statement executed by each owner upon blanks furnished by the secretary of state, setting forth: (1) the trade name to be registered and all persons concerned in the business, (2) the name or names and residences addresses of each and every person interested in or owning any part owner of the business, and (3) the nature of the business in detail. If, however, the interest of any person or persons engaged in business under a trade name shall change or cease to exist, or any other person shall become interested therein, such change shall be registered within ninety days after any change shall take place in the ownership of the business or any part thereof in the same manner as an original registration.

SECTION 2. AMENDMENT. Section 47-25-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25-04. Trade names - Registration - Fee - Renewal - Notice. For the registration of each trade name as provided for in this chapter, there shall be paid to the secretary of state a fee of twenty twenty-five dollars for an original registration, and a fee of two ten dollars for a change in the original registration as provided in this chapter. Any registration shall remain in force for a period of ten five years from the date of the original registration, and may be renewed 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 registered or certified mail at least ninety days before the expiration of such registrations.

Approved March 14, 1985

CHAPTER 510

SENATE BILL NO. 2178
(Committee on Industry, Business and Labor)
(At the request of the Commission on Uniform State Laws)

UNIFORM UNCLAIMED PROPERTY ACT

AN ACT to adopt the Uniform Unclaimed Property Act, relating to the disposition of abandoned and unclaimed property in this state; to create and enact a new section to chapter 15-02 of the North Dakota Century Code, relating to appointment of an administrator of this Act; to amend and reenact sections 6-07-46, 9-12-29, and subdivision v of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the disposition of unclaimed moneys of an insolvent bank, the claim of moneys deposited by a debtor with the county treasurer when the creditor cannot be located, and exclusion from the Administrative Agencies Practice Act; to repeal chapter 47-30 of the North Dakota Century Code, relating to the disposition of abandoned and unclaimed property in this state; and to provide a penalty.

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

SECTION 1. Definitions and use of terms. As used in sections 1 through 38 of this Act:

1. "Administrator" means the administrator of the state abandoned property office.
2. "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.
3. "Banking organization" means a bank, trust company, savings bank, private banker, or any organization defined by other law as a bank or banking organization.
4. "Business association" means a corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

5. "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.
6. "Financial organization" means a savings and loan association or credit union.
7. "Holder" means a person, wherever organized or domiciled, who is:
 - a. In possession of property belonging to another;
 - b. A trustee; or
 - c. Indebted to another on an obligation.
8. "Insurance company" means an insurance company as defined by section 26.1-02-01 and also includes a benevolent society, nonprofit health service corporation, and health maintenance organization.
9. "Intangible property" includes:
 - a. Moneys, checks, drafts, deposits, interest, dividends, and income.
 - b. Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances.
 - c. Stocks and other intangible ownership interests in business associations.
 - d. Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.
 - e. Amounts due and payable under the terms of insurance policies.
 - f. Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.
 - g. Amounts distributable from a mineral interest in land.
10. "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

11. "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to sections 1 through 38 of this Act or that person's legal representative.
12. "Person" means an individual, business association, state or other government, 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.
13. "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.
14. "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

SECTION 2. Property presumed abandoned - General rule.

1. Except as otherwise provided by sections 1 through 38 of this Act, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned.
2. Property is payable or distributable for the purpose of sections 1 through 38 of this Act notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

SECTION 3. General rules for taking custody of intangible unclaimed property. Unless otherwise provided in sections 1 through 38 of this Act or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under section 2 and sections 5 through 16 are satisfied and:

1. The last known address, as shown on the records of the holder, of the apparent owner is in this state;
2. The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

3. The records of the holder do not reflect the last known address of the apparent owner, and it is established that:
 - a. The last known address of the person entitled to the property is in this state; or
 - b. The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;
4. The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state;
5. The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or
6. The transaction out of which the property arose occurred in this state, and
 - a. (1) The last known address of the apparent owner or other person entitled to the property is unknown; or
 - (2) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and
 - b. The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

SECTION 4. Traveler's checks and money orders.

1. Subject to subsection 4, any sum payable on a traveler's check that has been outstanding for more than fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

2. Subject to subsection 4, any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within seven years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.
3. A holder may not deduct from the amount of a traveler's check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes those charges and does not regularly reverse or otherwise cancel them.
4. No sum payable on a traveler's check, money order, or similar written instrument, other than a third-party bank check, described in subsections 1 and 2 may be subjected to the custody of this state as unclaimed property unless:
 - a. The records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in this state;
 - b. The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or
 - c. The issuer has its principal place of business in this state, the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.
5. Notwithstanding any other provision in sections 1 through 38 of this Act, subsection 4 applies to sums payable on traveler's checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state before January 1, 1974.

SECTION 5. Checks, drafts, and similar instruments issued or certified by banking and financial organizations.

1. Any sum payable on a check, draft, or similar instrument, except those subject to section 4, on which a banking or financial organization is directly liable, including a

cashier's check and a certified check, which has been outstanding for more than five years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within five years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

2. A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes those charges and does not regularly reverse or otherwise cancel them.

SECTION 6. Bank deposits and funds in financial organizations.

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 the owner, within twenty 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.
2. For purposes of subsection 1 property includes interest and dividends.
3. A holder may not impose with respect to property described in subsection 1 any charge due to dormancy or inactivity or cease payment of interest unless:
- a. There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;
 - b. For property in excess of two dollars, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before July 1, 1985; and
 - c. The holder regularly imposes those charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.
4. Any property described in subsection 1 that is automatically renewable is matured for purposes of subsection 1 upon the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in section 19, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

SECTION 7. Funds owing under life insurance policies.

1. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subdivision b of subsection 3 is presumed abandoned if unclaimed for more than four years.
2. If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.
3. For purposes of sections 1 through 38 of this Act, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:
 - a. The company knows that the insured or annuitant has died; or
 - b. (1) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;
 - (2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph 1; and
 - (3) Neither the insured nor any other person appearing to have an interest in the policy within the preceding four years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.
4. For purposes of sections 1 through 38 of this Act, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection 1 if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the

- depletion of the cash surrender value of a policy by the application of those provisions.
5. If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.
 6. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.
 7. Commencing two years after July 1, 1985, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:
 - a. The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;
 - b. The address of each beneficiary; and
 - c. The relationship of each beneficiary to the insured.

SECTION 8. Deposits held by utilities. A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

SECTION 9. Refunds held by business associations. Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than two years after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

SECTION 10. Stock and other intangible interests in business associations.

1. Except as provided in subsections 2 and 5, stock or other intangible ownership interest in a business association,

- the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:
- a. Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or
 - b. Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.
2. At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions, or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first unclaimed dividend, distribution, or other sum became due and payable. If seven dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions, or other sums that have not been claimed by the owner.
3. The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection 1. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.
4. At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.
5. Sections 1 through 38 of this Act do not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a

result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in subsection 1.

SECTION 11. Property of business associations held in course of dissolution. Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

SECTION 12. Property held by agents and fiduciaries.

1. Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within five years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.
2. Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the federal Internal Revenue Code are not payable or distributable within the meaning of subsection 1 unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.
3. For the purpose of this section, a person who holds property as an agent for a business association holds the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.
4. For the purposes of sections 1 through 38 of this Act, a person who holds property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

SECTION 13. Property held by courts and public agencies. Intangible property held for the owner by a court, state, or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned. However, unclaimed intangible property held for the

owner by a public employee pension program in this state is not subject to abandonment under this Act.

SECTION 14. Gift certificates and credit memos.

1. A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned.
2. In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

SECTION 15. Wages. Unpaid wages, including wages represented by unrepresented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than two years after becoming payable are presumed abandoned.

SECTION 16. Contents of safe deposit box or other safekeeping repository. All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remain unclaimed by the owner for more than ten years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

SECTION 17. Report of abandoned property.

1. A person holding property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under sections 1 through 38 of this Act shall report to the administrator concerning the property as provided in this section.
2. The report must be verified and include:
 - a. Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of one hundred dollars or more presumed abandoned under sections 1 through 38 of this Act.
 - b. In the case of unclaimed funds of one hundred dollars or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds.

SECTION 18. Notice and publication of lists of abandoned property.

1. The administrator shall cause a notice to be published not later than March first, or in the case of property reported by life insurance companies, September first, of the year immediately following the report required by section 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.
 - c. A statement that, if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April twentieth, or, in the case of property reported by life insurance companies, before October twentieth, the property will be placed not later than May first, or in the case of property reported by life insurance companies, not later than November first, in the custody of the administrator and all further claims must thereafter be directed to the administrator.
3. The administrator is not required to publish in the notice any items of less than one hundred 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 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 one hundred dollars or more presumed abandoned under sections 1 through 38 of this Act 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. This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under section 4.

SECTION 19. Payment or delivery of abandoned property.

1. Except as otherwise provided in subsections 2 and 3, a person who is required to file a report under section 17, within six months after the final date for filing the report as required by section 17, shall pay or deliver to the administrator all abandoned property required to be reported.

2. If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the administrator, and the property will no longer be presumed abandoned. In that case, the holder shall file with the administrator a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

3. Property reported under section 17 for which the holder is not required to report the name of the apparent owner must be delivered to the administrator at the time of filing the report.

4. The holder of an interest under section 10 shall deliver a duplicate certificate or other evidence of ownership if

the holder does not issue certificates of ownership to the administrator. Upon delivery of a duplicate certificate to the administrator, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with section 20 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

SECTION 20. Custody by state - Holder relieved from liability - Reimbursement of holder paying claim - Reclaiming for owner - Defense of holder - Payment of safe deposit box or repository charges.

1. Upon the payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the administrator in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.
2. A holder who has paid money to the administrator pursuant to sections 1 through 38 of this Act 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 29.
3. A holder who has delivered property, including a certificate of any interest in a business association, other than money to the administrator pursuant to sections 1 through 38 of this Act may reclaim the property if still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

4. The administrator may accept the holder's affidavit as sufficient proof of facts that entitle the holder to recover money and property under this section.
5. If the holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.
6. For the purposes of this section, "good faith" means that:
 - a. Payment or delivery was made in a reasonable attempt to comply with sections 1 through 38 of this Act;
 - b. The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to that person, that the property was abandoned for the purposes of sections 1 through 38 of this Act; and
 - c. There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.
7. Property removed from a safe deposit box or other safekeeping repository is received by the administrator subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse or pay the holder out of the proceeds remaining after deducting the administrator's selling cost.

SECTION 21. Crediting of dividends, interest, or increments to owner's account. Whenever property other than money is paid or delivered to the administrator under sections 1 through 38 of this Act, the owner is entitled to receive from the administrator any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

SECTION 22. Public sale of abandoned property.

1. Except as provided in subsections 2 and 3, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the administrator the most favorable market for the property involved. The administrator may decline

the highest bid and reoffer the property for sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

2. Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator considers advisable.
3. Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under section 10, delivered to the administrator must be held for at least one year before the administrator may sell them.
4. Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under section 10 and delivered to the administrator must be held for at least three years before the administrator may sell them. If the administrator sells any securities delivered pursuant to section 10 before the expiration of the three-year period, any person making a claim pursuant to sections 1 through 38 of this Act before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to subsection 2 of section 23 of this Act. A person making a claim under sections 1 through 38 of this Act after the expiration of this period is entitled to receive either the securities delivered to the administrator by the holder, if they still remain in the hands of the administrator, or the proceeds received from sale, less any amounts deducted pursuant to subsection 2 of section 23 of this Act, but no person has any claim under sections 1 through 38 of this Act against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the administrator.
5. The purchaser of property at any sale conducted by the administrator pursuant to sections 1 through 38 of this Act takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The administrator shall execute

all documents necessary to complete the transfer of ownership.

SECTION 23. Deposit of funds.

1. Except as otherwise provided by this section, the administrator shall promptly deposit in the state treasury to the credit of the common schools trust fund all funds received under sections 1 through 38 of this Act, including the proceeds from the sale of abandoned property under section 22. The administrator shall retain in a separate trust fund an amount not less than one hundred thousand dollars from which prompt payment of claims duly allowed must be made. Before making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, the name of the company, and the amount due. The record must be available for public inspection at all reasonable business hours.
2. Before making any deposit to the credit of the common school trust fund, the administrator may deduct:
 - a. Any costs in connection with the sale of abandoned property;
 - b. Costs of mailing and publication in connection with any abandoned property;
 - c. Reasonable service charges; and
 - d. Costs incurred in examining records of holders of property and in collecting the property from those holders.

SECTION 24. Filing of claim with administrator.

1. A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file with him a claim on a form prescribed by him and verified by the claimant.
2. The administrator shall consider each claim within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice

of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

3. If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator, together with any additional amount required by section 21. If the claim is for property presumed abandoned under section 10 which was sold by the administrator within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater.

SECTION 25. Claim of another state to recover property - Procedure.

1. At any time after property has been paid or delivered to the administrator under sections 1 through 38 of this Act another state may recover the property if:
 - a. The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under sections 1 through 38 of this Act, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state;
 - b. The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state;
 - c. The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state;
 - d. The property was subjected to custody by this state under subsection 6 of section 3 and under the laws of the state of domicile of the holder the property has escheated to or became subject to a claim of abandonment by that state; or

- e. The property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under section 4, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.
2. The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim if the administrator determines that the other state is entitled to the abandoned property under subsection 1.
3. The administrator shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property.

SECTION 26. Action to establish claim. A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the appropriate district court, naming the administrator as a defendant. The action must be brought within ninety days after the decision of the administrator or within one hundred eighty days after the filing of the claim if the administrator has failed to act on it. If the aggrieved person establishes and is awarded the claim in an action against the administrator, the court shall award costs and reasonable attorney's fees.

SECTION 27. Election to take payment or delivery.

1. The administrator may decline to receive any property reported under sections 1 through 38 of this Act which the administrator considers to have a value less than the expense of giving notice and of sale. If the administrator elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under section 17.
2. A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under sections 1 through 38 of this Act.

SECTION 28. Destruction or disposition of property having insubstantial commercial value - Immunity from liability. If the administrator determines after investigation that any property delivered under sections 1 through 38 of this Act has insubstantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the administrator pursuant to this section.

SECTION 29. Periods of limitation. The expiration, before or after the effective date of sections 1 through 38 of this Act, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by sections 1 through 38 of this Act.

SECTION 30. Requests for reports and examination of records.

1. The administrator may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under sections 1 through 38 of this Act.
2. The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with sections 1 through 38 of this Act. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under sections 1 through 38 of this Act.
3. If a person is treated under section 12 as the holder of the property only insofar as the interest of the business association in the property is concerned, the administrator, pursuant to subsection 2, may examine the records of the person if the administrator has given the notice required by subsection 2 to both the person and the business association at least ninety days before the examination.
4. If an examination of the records of a person results in the disclosure of property reportable and deliverable under sections 1 through 38 of this Act, the administrator may assess the cost of the examination against the holder at the rate of one hundred dollars a day for each examiner, but in no case may the charges exceed the value of the property found to be reportable and deliverable. The cost of examination made pursuant to subsection 3 may be imposed only against the business association.

5. If a holder fails after July 1, 1985, to maintain the records required by section 31 and the records of the holder available for the periods subject to sections 1 through 38 of this Act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

SECTION 31. Retention of records.

1. Every holder required to file a report under section 17, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for ten years after the property becomes reportable, except to the extent that a shorter time is provided in subsection 2 or by rule of the administrator.
2. Any business association that sells in this state its traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides those instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

SECTION 32. Enforcement. The administrator may bring an action in a court of competent jurisdiction to enforce sections 1 through 38 of this Act.

SECTION 33. Interstate agreements and cooperation - Joint and reciprocal actions with other states.

1. The administrator may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The administrator by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.
2. To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator, so far as is consistent with the purposes, policies, and provisions of sections 1 through 38 of this Act, before adopting, amending, or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the

rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

3. The administrator may join with other states to seek enforcement of sections 1 through 38 of this Act against any person who is or may be holding property reportable under sections 1 through 38 of this Act.
4. At the request of another state, the attorney general of this state may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.
5. The administrator may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state. This state shall pay all expenses including attorney's fees in any action under this subsection. The administrator may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under sections 1 through 38 of this Act.

SECTION 34. Penalties.

1. A person who willfully fails to render any report or perform other duties required under sections 1 through 38 of this Act shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than the value of the property that should have been paid or delivered.
2. A person who willfully fails to pay or deliver property to the administrator as required under sections 1 through 38 of this Act shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.
3. A person who willfully refuses after written demand by the administrator to pay or deliver property to the administrator as required under sections 1 through 38 of this Act is guilty of a class B misdemeanor.

SECTION 35. Agreement to locate reported property. All agreements to pay compensation to recover or assist in the recovery of property reported under section 17, made within twenty-four months after the date payment or delivery is made under section 19, are unenforceable.

SECTION 36. Foreign transactions. Sections 1 through 38 of this Act do not apply to any property held, due and owing in a foreign country and arising out of a foreign transaction.

SECTION 37. Effect of new provisions - Clarification of application.

1. Sections 1 through 38 of this Act do 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 29.
2. The initial report filed under sections 1 through 38 of this Act for property that was not required to be reported before July 1, 1985, but which is subject to sections 1 through 38 of this Act must include all items of property that would have been presumed abandoned during the ten-year period preceding July 1, 1985, as if sections 1 through 38 of this Act had been in effect during that period.

SECTION 38. Rules. The administrator may adopt necessary rules to carry out sections 1 through 38 of this Act.

SECTION 39. AMENDMENT. Section 6-07-46 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-46. Disposition of unclaimed dividends or other moneys delivered to commissioner. Any unclaimed dividend or other moneys delivered to the commissioner by the receiver of an insolvent bank pursuant to the provisions of section 6-07-38 prior to July 1, 1975, shall be paid to the state treasurer who shall credit such payments to the general fund of this state. Any unclaimed dividends or other moneys credited to such fund may thereafter be paid to the lawful owner thereof, his heirs, executors, administrators, or assigns when proven to the satisfaction of the commissioner that he is legally entitled thereto. Such payment shall be made by a warrant drawn by the office of management and budget and issued in payment of a claim voucher certified to by the claimant and approved by the commissioner. The moneys required for the payment of such claims are hereby appropriated out of the general fund.

Any unclaimed dividend or other moneys delivered to the commissioner by the receiver of an insolvent bank pursuant to the provisions of section 6-07-38 after July 1, 1975, shall be transferred to the commissioner of university and school lands and voucher for the payment of such dividends to persons entitled thereto in accordance with ~~chapter 47-39~~ sections 1 through 38 of this Act.

SECTION 40. AMENDMENT. Section 9-12-29 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9-12-29. Claim of money by creditor - Extinguishment of lien. The creditor is entitled to claim the amount of money from the county treasurer within nine months of the date of deposit upon a showing to the county treasurer of a satisfaction of the lien, encumbrance, or cloud which includes an indication by the register of deeds that the satisfaction has been duly recorded. If the creditor does not claim the money in nine months from the date of first publication of the notice, the money, a copy of the debtor's affidavit, and a copy of the published notice shall be forwarded by the county treasurer to the state land commissioner for deposit to the credit of the state of North Dakota for the use and benefit of the common schools trust fund of the state. At the same time these items are forwarded to the state land commissioner, the county treasurer shall record in the office of the register of deeds a notice to the effect that the lien, encumbrance, or cloud affecting or related to the title to the real property, giving the specific legal description of the property, has been discharged by the procedures set out in section 9-12-28 and this section. The debtor shall pay the register of deeds' fees for recording the county treasurer's notice.

At any time after the original nine-month period, the creditor, or the creditor's heirs, successors, or assigns, may claim the full amount of the original deposit without any interest or penalty from the state ~~estate~~ administrator of abandoned and unclaimed property in the manner specified in ~~chapter 47-30~~ sections 1 through 38 of this Act for claiming the proceeds of other abandoned and unclaimed property.

SECTION 41. A new section to chapter 15-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administrator of abandoned property - Employment. The commissioner of university and school lands shall employ an administrator of abandoned property and other personnel as necessary for the proper administration of sections 1 through 38 of this Act and shall set their salaries, within limits of legislative appropriations. All public officers shall assist the administrator in carrying out the administration of sections 1 through 38 of this Act.

SECTION 42. AMENDMENT. Subdivision v of subsection 1 of section 28-32-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- v. The board of university and school lands except with respect to activities under sections 1 through 38 of this Act.

SECTION 43. REPEAL. Chapter 47-30 of the North Dakota Century Code is hereby repealed.

Approved April 15, 1985

PUBLIC BUILDINGS

CHAPTER 511

HOUSE BILL NO. 1111
(Committee on State and Federal Government)
(At the request of the Board of Higher Education)

EMERGENCY EXEMPTION FROM PUBLIC BUILDING BID REQUIREMENTS

AN ACT to amend and reenact section 48-02-03 of the North Dakota Century Code, relating to the requirements for securing bids for public buildings.

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

SECTION 1. AMENDMENT. Section 48-02-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-03. Method used in securing bids. The governing board shall advertise for bids for the doing of the work for which plans, drawings, and specifications are required by section 48-02-02. Such advertisement shall be published for three successive weeks, the first publication thereof to be at least twenty-one days prior to the date of the opening of bids thereunder. Such advertisement shall be published in the official newspaper of such municipality or political subdivision, and also in some trade publication of general circulation among the contractors, building manufacturers, and dealers of this state. Alterations or improvements may be accomplished by a state department or institution on competitive bids or on a time and material basis or by institutional personnel if the total cost of any one project does not exceed the sum of twenty-five thousand dollars. In instances where a contractor is performing work on a time and material basis, all materials and all labor supplied by such contractor must be obtained by competitive estimates from qualified suppliers for projects. The requirements of this section may be waived by the governing board if it determines that an emergency situation exists requiring the prompt destruction, demolition, or repair of an existing building, facility, or portion thereof, and a contract may be made for such prompt destruction, demolition, or repair without seeking bids.

Approved March 14, 1985

CHAPTER 512

SENATE BILL NO. 2305
(Senator Todd)
(Representatives Unhjem, Retzer)

PUBLIC BUILDING LEASES

AN ACT to amend and reenact sections 48-08-07 and 54-40-02.1 of the North Dakota Century Code, relating to term limitations on the lease of public buildings.

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

SECTION 1. AMENDMENT. Section 48-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-08-07. Lease of public buildings - Terms. No lease of any public building or part of any public building under the provisions of section 48-08-06 shall be for a longer term than ~~one year~~ two years, except as may be otherwise provided by city ordinance. Such lease shall be to a responsible party offering the highest return to the municipality and the use or occupation of the building shall not interfere with the use of such building for public purposes. The governing body may reserve the right to reject any and all bids.

SECTION 2. AMENDMENT. Section 54-40-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-40-02.1. Building management commission for county and city building - Lease authority. Any agreement entered into between a county and a city under this chapter for the acquisition, construction, and maintenance of a building for their joint use by bonds issued pursuant to section 54-40-03 shall provide for a building management commission composed of elected officials of the county, elected officials of the city, and representatives of the public, with the exact number of each to be specified in the agreement. The agreement shall specify the powers to be exercised by the building management commission with respect to the acquisition, construction, and maintenance of the building, and with respect to any lease entered into by the commission and any noncounty and noncity governmental entity for use of a portion of the building. Notwithstanding section 48-08-07, a lease of a portion of any building used jointly by a county and a city pursuant to this section may be for a term longer than ~~one year~~ two years.

Approved March 30, 1985

CHAPTER 513

SENATE BILL NO. 2382
(Mushik, Satrom, Kelly)

CAPITOL ARTS AND HISTORIC PRESERVATION COMMITTEE FUND

AN ACT to create and enact a new section to chapter 48-11 of the North Dakota Century Code, relating to a special operating fund to be administered by the capitol arts and historic preservation advisory committee; and providing limited continuing appropriation authority to expend moneys received as gifts and grants.

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

SECTION 1. A new section to chapter 48-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Special operating fund - Acceptance of gifts - Continuing appropriation.
A special operating fund for the capitol arts and historic preservation advisory committee must be maintained in the state treasury. The committee may accept any federal funds and any other gifts and money from any source that may be offered to the committee. All moneys received by the committee as gifts, donations, grants, or bequests, including all federal moneys, must be deposited in the special operating fund. All expenditures from the fund must be made on vouchers, approved and signed by the chairman or secretary of the committee and submitted to the office of management and budget for approval and payment. The committee may expend funds in the special operating fund, not to exceed ten thousand dollars per biennium, for improvements, furnishings, decorations, and fixtures in and around the state capitol and other state buildings, facilities, and properties.

Approved March 22, 1985

PUBLIC UTILITIES

CHAPTER 514

SENATE BILL NO. 2298
(Mutch)

MOTOR CARRIER IDENTIFICATION TAGS

AN ACT to amend and reenact section 49-18-41 of the North Dakota Century Code, relating to identification tags secured by motor carriers as evidence of receipt of certificate of public convenience.

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

SECTION 1. AMENDMENT. Section 49-18-41 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-41. Identification tag to be secured by motor carrier - Temporary identification certificate for certain vehicles.

1. Every Except as provided in subsection 2, each motor carrier who under the statutes of this state must register with or secure a permit or certificate of public convenience and necessity from the commission, except a common carrier of passengers, at the time of securing such certificate or permit, and annually thereafter on or before April fifteenth of each calendar year, shall secure from the commission an identification tag for each motor vehicle operated within this state, which shall be in the form, color combination, lettering, and numbering prescribed by the commission. The identification tag for each type of carrier licensed by the commission shall be identified in a manner different from that of each other type of carrier. The commission shall collect a fee of twenty dollars for each identification tag. No motor carrier shall operate in this state without having an identification tag attached to each vehicle owned and operated by such carrier. The identification plate shall be secured from the registrar of motor vehicles upon request from the commission.
2. A motor carrier operating a motor vehicle in this state for not more than thirty days a year may secure, in place

of the identification tag required under subsection 1, a temporary identification certificate for that motor vehicle from the commission. The fee for the certificate is five dollars. When a motor vehicle is operated under the authority of a certificate issued under this subsection, the operator of the motor vehicle shall carry that certificate in the motor vehicle while it is operated in this state.

Approved March 22, 1985

CHAPTER 515

SENATE BILL NO. 2201
(Committee on State and Federal Government)
(At the request of the Public Service Commission)

TELECOMMUNICATIONS REGULATION

AN ACT to create and enact four new sections to chapter 49-21 of the North Dakota Century Code, relating to the regulation of telecommunications companies by the public service commission; to amend and reenact sections 49-02-01, 49-02-01.1, subsection 7 of section 49-02-02, sections 49-02-05.1, 49-04-19, 49-05-02, 49-09-15, 49-09-16, 49-19-09, 49-19-10, 49-20-12.1, 49-21-01, 49-21-02, 49-21-04, 49-21-05, 49-21-06, 49-21-07, 49-21-08, 49-21-09, 49-21-10, and 49-21.1-05 of the North Dakota Century Code, relating to the jurisdiction of the public service commission over telecommunications companies, the regulation of telecommunications companies, security interests against telecommunications companies, conveyance of real property by a telecommunications company, right-of-way for telecommunications lines, right-of-way for pipeline telecommunications lines, compensations for damages done by laying pipeline telecommunications line, and changes in the topography of land under or adjacent to telecommunications lines; and to repeal sections 49-21-03, 49-21-11, 49-21-12, 49-21-13, and 49-21-16 of the North Dakota Century Code, relating to regulation of telephone and telegraph companies and penalties for failure to comply with a public service commission order regarding telephone and telegraph companies.

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

SECTION 1. AMENDMENT. Section 49-02-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-01. General jurisdiction of the public service commission over public utilities. The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.

2. Telephone and communications utilities Telecommunications companies engaged in the transmission of messages or conversations furnishing of telecommunications services.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. Warehouse companies engaged in the marketing, storage, or handling of agricultural products.
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

SECTION 2. AMENDMENT. Section 49-02-01.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities. Nothing in this chapter shall authorize the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, except a telephone telecommunications utility, that is not operated for profit, but all other provisions herein shall apply to such utilities. The rates for local exchange telecommunications service of any nonprofit telephone telecommunications company or telephone telecommunications company having less than three thousand subscribers, upon a vote of the company's owners or board of directors, shall not be subject to the jurisdiction of the commission.

SECTION 3. AMENDMENT. Subsection 7 of section 49-02-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for rate increase application hearings, investigations, and proceedings relating to gas, electric, or telephone telecommunications public utilities. The expense of any hearings, investigations, and proceedings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearing, investigation, or proceeding, shall upon the order of the

commission be paid by the public utility being investigated or involved in such hearing or proceeding. The commission shall ascertain such costs and expenditures. After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility. The billing and order may be made from time to time during the hearing, investigation, or proceeding, or at the conclusion thereof, as the commission shall determine. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility, within ten days after receipt, shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment shall draw interest at the rate of six percent per annum from the date of receipt of the order. All costs and expenses collected by the commission under this subsection shall be paid into the general fund of the state treasury.

SECTION 4. AMENDMENT. Section 49-02-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-02-05.1. Power to fix terms by which the facilities of one utility may cross those of another utility. Whenever public convenience and necessity requires that an electric or ~~telephone~~ telecommunications distribution or transmission line, pipeline, or railroad track of any public utility cross a line or track of another public utility and the public utilities have failed to agree upon the terms and conditions or compensation for the same, the commission, after notice and hearing, may prescribe reasonable terms, conditions, and compensation under which the crossing shall be permitted.

SECTION 5. AMENDMENT. Section 49-04-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-04-19. Security interests against transmitting utilities - Filing instruments with secretary of state.

1. When used in this section the term "transmitting utility" means persons, corporations or other legal entities, and lessees, trustees and receivers, now or hereafter operating, maintaining or controlling in this state equipment or facilities for the production, generation, transmission or distribution of electric, ~~telegraph or telephone~~ telecommunications services, or the transmission or distribution of crude oil, gas, petroleum products, steam or water by pipeline.
2. a. Notwithstanding the provisions of sections 41-09-23, 41-09-40, 41-09-41 and 41-09-42, all filings required

under the Uniform Commercial Code in order to perfect a security interest against the personal property or fixtures of a debtor transmitting utility shall be made and maintained only in the office of the secretary of state of North Dakota.

- b. When the financing statement covers goods of a transmitting utility as herein defined which are or are to become fixtures, no description of the real estate to which such fixtures are or may become attached is required.
 - c. Filing of a financing statement against the property of a transmitting utility is effective until five years after the maturity date contained therein in the case of personal property and until fifteen years after the maturity date in the case of fixtures annexed to real property, or if no maturity date is contained therein, until released or terminated.
3. Unless displaced by the specific provisions of this section, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this section.

SECTION 6. AMENDMENT. Section 49-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-05-02. Right to make certain complaints limited. No complaint as to the reasonableness of any rates or charges of any heat, gas, electrical, water, or ~~telephone~~ telecommunications utility shall be entertained by the commission except when made upon its own motion, unless the same is signed by the governing body of the county or city, if any, within which the alleged violation occurred, or by not less than ten percent of the consumers or purchasers of such heat, gas, electrical, water, or ~~telephone~~ telecommunications service.

SECTION 7. AMENDMENT. Section 49-09-15 of the North Dakota Century Code is hereby amended and reenacted to read 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, ~~telegraph or telephone~~ telecommunications lines, or gas or oil pipelines, also shall 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.

SECTION 8. AMENDMENT. Section 49-09-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-16. Right of way - ~~Telephone~~ Telecommunications - Electric light - Gas and oil pipeline systems. The governing board of any municipal corporation may grant to any person who is a resident of this state, to any corporation organized under the laws of this state, or to any corporation licensed to do business within this state, the right of way for the construction and operation of a railway, ~~telephone~~ telecommunications line, electric light system, or a gas or oil pipeline system, over or upon any public grounds, streets, alleys, or highways under the care or supervision of the board granting such right of way. Such right of way shall be granted subject to such conditions, restrictions, and regulations as may be prescribed by the board granting the same, relative to the streets, alleys, or highways upon, over, under, or across which the way, line, or system shall be built and operated.

SECTION 9. AMENDMENT. Section 49-19-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-19-09. Permission to secure right of way - Condition. The right to lay, maintain, and operate pipelines, together with ~~telegraph and telephone~~ telecommunications lines incidental to and designed for use only in connection with the operation of such lines along, across, or under any public stream or highway in this state, is conferred upon all common pipeline carriers. Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental ~~telephone and telegraph~~ telecommunications lines along, across, or over any public road or highway in this state by filing with the commission an acceptance of the provisions of this chapter, expressly agreeing in writing that in consideration of the rights so acquired, the applicant shall be and become a common pipeline carrier, subject to the duties and obligations conferred or imposed in this chapter. Such right to run along, across, or over any public road or highway, as herein provided for, can be exercised only upon condition that the traffic thereon shall not be interfered with, that such road or highway shall be restored promptly to its former condition of usefulness, and that the restoration thereof shall be subject also to the supervision of the board of county commissioners of the county in which said highway is situated.

SECTION 10. AMENDMENT. Section 49-19-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-19-10. Compensating county for damage to public road in laying pipelines. In the exercise of the privileges conferred in section 49-19-09, the common pipeline carrier shall compensate the county for any damage done to any public road in the laying of pipelines, or ~~telegraph or telephone~~ telecommunications lines, along or across the same. Nothing herein shall be construed to grant any such pipeline the right to use any public street or alley in any

incorporated city, except by express permission from the governing authority thereof.

SECTION 11. AMENDMENT. Section 49-20-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-20-12.1. Notice of change in topography of lands under or adjacent to electric transmission or telephone telecommunications lines. Before any change is made in the topography of lands under, or adjacent to, any electric transmission or telephone telecommunications lines, which change would increase the hazard to travel, or to persons or property, the one proposing to make such change shall, except in the case of an emergency, at least ten days before proceeding therewith, notify the public utility or cooperative corporation operating such electric transmission or telephone telecommunications lines. Such notification shall clearly state the nature and location of the proposed change in topography and shall be sent to such public utility or cooperative corporation at its principal place of business within the state by registered or certified mail. In case of an emergency, where ten days' notice cannot be given, notice shall be given, as herein provided, prior to proceeding with such change.

SECTION 12. AMENDMENT. Section 49-21-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
2. "Physical connection" shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between different telephone companies or different telephone systems. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
3. "Telephone company" shall include all persons, firms, corporations, or other organizations engaged in the business of furnishing means of communication by telephone within this state. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave or other means.

SECTION 13. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inapplicability of provisions of chapter. Telecommunications service does not include and the provisions of this title do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. A hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling telecommunications services to its patients or guests.
3. Telegraph service.
4. Home and business telephone terminal equipment.
5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.

SECTION 14. AMENDMENT. Section 49-21-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-02. Telephone companies - Common carriers- All persons, firms, corporations, and other organizations engaged in the business of furnishing means of communication by telephone within this state shall be common carriers. The commission shall have general supervision of such common carriers. Telecommunications companies - Common carriers - Public policy. All persons providing telecommunications service within this state shall be common carriers and are hereby declared to be affected with a public interest and subject to regulation and general supervision by the commission. Among the purposes to be served by such regulation and supervision are:

1. To make available to all people of this state modern and efficient telecommunications services at the most economic and reasonable cost.
2. To allow the development of competitive markets for telecommunications services where such competition does not unreasonably distract from the efficient provision of telecommunications services to the public, and to lessen regulation in whole or in part of those telecommunications services which become subject to effective competition.

3. To establish and maintain reasonable charges for telecommunications services without unreasonable discrimination, or unfair or destructive competitive practices.
4. To ensure that regulated charges do not include the costs of unregulated activities.
5. To encourage the establishment and maintenance of a strong telecommunications industry.

SECTION 15. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authority to exempt from regulation.

1. The commission may exempt a telecommunications service, a telecommunications company, or a transaction by a telecommunications company from one or more of the provisions of this title when the commission determines that the application of such provisions are not necessary to carry out the telecommunications policy of section 49-21-02; and either of the following apply:
 - a. The transaction or service is of limited scope.
 - b. The application of a provision of this title is not needed to protect subscribers because the service, company, or transaction is subject to effective competition.
2. In determining if a telecommunications service, company, or transaction is subject to effective competition, the commission shall consider all of the following:
 - a. The extent to which competing telecommunications services are available from providers in the relevant geographic area or market.
 - b. The ability of such providers to make competing telecommunications services which are equivalent or substitutable and readily available at comparable rates, terms, quality and conditions.
 - c. Other indicators of the extent of competition, including the market share, growth in the market share, and the affiliation of providers of competing telecommunications services as the commission deems appropriate.
3. The commission may begin a proceeding under this section on its own initiative or on application by an interested party. The commission may specify the period of time

during which an exemption granted under this section is effective. The commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this title to the service, company, or transaction is necessary to carry out the telecommunications policy set forth in section 49-21-02.

4. When the commission exempts a telecommunications service from all of the provisions of this title, the investment, revenues, and expenses associated with the service shall not be considered by the commission in setting rates for the telecommunications company's regulated services unless they continue to affect the company's regulated operations. Nothing in this section precludes the commission from considering the investment, revenues and expenses associated with the sale of classified directory advertising or directory listings by a telecommunications company in determining rates for the regulated services of the telecommunications company.
5. The commission may not be unjustly discriminatory or preferential in the regulatory treatment of any telecommunications company.

SECTION 16. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separation between regulated and unregulated services. Revenues obtained from regulated services shall not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated enterprises. If a telecommunications company offers both regulated services and services that are unregulated as determined under section 15 of this Act, the commission may require the telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission and to perform such other acts as will assist the commission in enforcing this section.

SECTION 17. AMENDMENT. Section 49-21-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-04. Schedules of rates to be filed with commission. The commission shall require each telephone company subject to the commission's rate jurisdiction, within such time as the commission shall fix and in such form and detail as it may require, to file with the commission. Tariffs filed with the commission. Each telecommunications company, including companies excluded from the commission's rate jurisdiction pursuant to section 49-02-01.1, shall file with the commission in such form and detail as it may require:

1. Schedules showing all rates and charges which are established and in effect at the time for any telecommunications service rendered to the public by such telephone telecommunications company within this state; and
2. All rules and regulations which in any manner affect the rates charged or to be charged for such service;

and such telephone company shall not make any changes thereafter in said schedules, rates, or charges other than those named in such schedule without first securing the consent of the commission.

SECTION 18. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maximum and minimum rates - Changes. Notwithstanding the provisions of section 49-05-05 to the contrary, the commission may approve schedules of rates for a service that establishes only maximum rates, only minimum rates, or both minimum and maximum rates. A telecommunications company having such an approved schedule may, with respect to the services covered by the schedule, change its rates after such notice to the public and commission as the commission prescribes.

SECTION 19. AMENDMENT. Section 49-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-05. Schedule of rates to be on file for public inspection. The commission may require any telephone telecommunications company to keep on file and accessible to the public, at any city in which the telephone telecommunications company has an office, a schedule of such rates and charges as the commission may deem necessary.

SECTION 20. AMENDMENT. Section 49-21-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-06. Complaint against rates or service. Any telephone telecommunications company, municipality, or not less than ten percent of the patrons of a telephone telecommunications company within any municipality or territory contiguous thereto, may make complaint to the commission of the unreasonableness or inadequacy of any rate or charge.

SECTION 21. AMENDMENT. Section 49-21-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telephone telecommunications company to make or give any undue or unreasonable preference or advantage to any person, ~~firm, or corporation,~~ or to subject any person, ~~firm, or corporation~~ to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public, or to charge or receive for any such

service rendered, more or less than the rates and charges provided for in the schedules then on file with the commission. Nothing in this chapter shall be construed to prevent any telephone telecommunications company from furnishing free telephone telecommunications service or service at reduced rates to its officers, agents, servants, or employees.

SECTION 22. AMENDMENT Section 49-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-08. Unnecessary duplication of exchanges prohibited. Whenever any telephone telecommunications company furnishes adequate local exchange telecommunications service and supplies the reasonable wants of the people of the city or community in which it is operating, and complies with the orders of the commission, the commission shall not grant to any other telephone telecommunications company the right to compete with such carrier telecommunications company in the provision of local exchange telecommunications service until after a public hearing of all parties interested, and a finding by the commission that the public convenience and necessity may require such competing plant. Nothing contained in this chapter shall be held to prevent any telephone telecommunications company from extending its lines within the limits of any city in which it at the time is lawfully operating a local telephone exchange.

SECTION 23. AMENDMENT. Section 49-21-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-09. Telephone Telecommunications - Connections - Rates. Whenever the commission shall find, ~~after hearing, upon notice,~~ that a physical connection can be made reasonably between the lines facilities of two or more telephone corporations, or by the construction and maintenance of suitable connections telecommunications companies for the transfer of messages or conversations telecommunications and that public convenience and necessity will be subserved thereby, the commission, ~~by its order,~~ may require that such connection be made. The commission, ~~after hearing,~~ may establish rates for the transfer of messages or conversations over two or more telephone lines telecommunications between telecommunications companies and may order that conversations telecommunications be transmitted and messages transferred by the companies owning the same.

SECTION 24. AMENDMENT. Section 49-21-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-10. Transmitting messages telecommunications from other telephone telecommunications companies. Every telephone corporation telecommunications company operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages telecommunications of every other

~~telephone corporation telecommunications company with whose line a physical which a connection may have has~~ been made.

SECTION 25. AMENDMENT. Section 49-21.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21.1-05. Exceptions. This chapter shall not apply to:

1. Construction, reconstruction, operation, or maintenance of any high voltage overhead conductor, supporting structure, or appurtenances for the support or operation of a high voltage conductor by persons authorized by the owner or operator.
2. Work being done on ~~telephone telecommunications~~, coaxial, signaling, and other communication circuits or their supporting structures, or other circuits and their supporting structures which are not high voltage as defined in section 49-21.1-01.
3. The operation or maintenance of any railroad equipment or vehicles traveling or moving upon fixed rails or railroad right of way.

SECTION 26. REPEAL. Sections 49-21-03, 49-21-11, 49-21-12, 49-21-13, and 49-21-16 of the North Dakota Century Code are hereby repealed.

Approved March 31, 1985

CHAPTER 516

HOUSE BILL NO. 1523
(Representatives Strinden, A. Olson, Myrdal)

TRANSMISSION FACILITY LEGISLATIVE APPROVAL

AN ACT to create and enact a new section to chapter 49-22 of the North Dakota Century Code, relating to legislative approval prior to construction of hydroelectric transmission facilities which transmit hydroelectric power produced outside the United States.

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

SECTION 1. A new section to chapter 49-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

Approval of hydroelectric transmission facilities by legislative assembly required. After compliance with the applicable requirements of this chapter, any hydroelectric transmission facility that transmits hydroelectric power produced outside the United States, and which crosses any portion of this state, must have the approval of the legislative assembly by concurrent resolution. A person may not begin construction of a hydroelectric transmission facility in this state that transmits hydroelectric power produced outside the United States, or exercise the right of eminent domain in connection with such construction, without first having complied with this chapter and obtained the approval of the legislative assembly. This section shall not apply to any transmission facility for which a route permit and certificate of corridor compatibility has been issued prior to the effective date of this Act, or any extension thereof issued after the effective date of this Act.

Approved April 15, 1985

CHAPTER 517

HOUSE BILL NO. 1522
(Representatives Strinden, A. Olson, Myrdal)
(Senator Vosper)

MANDAN PROJECT ROUTE PERMIT REVOKED

AN ACT to provide for the discretionary revocation, and subsequent discretionary reinstatement, by executive order of the governor, of the route permit and certificate of corridor compatibility issued for the MANDAN power project; to provide an expiration date; and to declare an emergency.

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

SECTION 1. MANDAN power project permit and certificate approval revoked. The governor may, by executive order, revoke the route permit and certificate of corridor compatibility issued pursuant to chapter 49-22 of the North Dakota Century Code under public service commission case no. 10,349 to the Nebraska public power district for the MANDAN (Manitoba, Dakotas and Nebraska) project for an electric transmission facility through the state of North Dakota. Revocation of the permit and certificate pursuant to this Act by the governor must be based upon relevant statutory guidelines, including the factors considered in the issuance of a certificate of public convenience and necessity and the factors to be considered in evaluating applications and designations of sites, corridors, and routes as provided in section 49-22-09, and upon the governor's determination that the MANDAN project is not consistent with the public convenience and necessity of this state, or is not consistent with the general health and welfare of the citizens of this state, or the utility has abandoned the project. If the permit and certificate are revoked pursuant to this Act, the governor may, by executive order, reinstate the permit and certificate based upon the guidelines provided for revocation and upon the governor's determination that the MANDAN project is consistent with the public convenience and necessity of this state, and is consistent with the general health and welfare of the citizens of this state.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1987, and after that date is ineffective.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 518

SENATE BILL NO. 2148
(Committee on Natural Resources)
(At the request of the Public Service Commission)

CIVIL PENALTIES FOR SITING ACT
VIOLATIONS

AN ACT to amend and reenact subsection 3 of section 49-22-21 of the North Dakota Century Code, relating to civil penalties for violations of the North Dakota Energy Conversion and Transmission Facility Siting Act.

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

SECTION 1. AMENDMENT. Subsection 3 of section 49-22-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any person who willfully engages in any of the following conduct shall be subject to a civil penalty of not more than ten thousand dollars not to exceed ten thousand dollars for each such violation for each day that such violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of an energy conversion facility or a transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an energy conversion facility or a transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise shall be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

Approved February 6, 1985

CHAPTER 519

SENATE BILL NO. 2149
(Committee on Transportation)
(At the request of the Public Service Commission)

CONTRACT MOTOR CARRIER PERMIT

AN ACT to amend and reenact sections 49-18-13, 49-18-21, 49-18-23, and 49-18-39.1 of the North Dakota Century Code, relating to notice of opportunity for hearing on application for a certificate of public convenience and necessity, notice of opportunity for hearing for a contract motor carrier permit, issuance of a contract carrier permit, and motor vehicle leases.

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

SECTION 1. AMENDMENT. Section 49-18-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-13. Notice of opportunity for hearing on application. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall cause notice of opportunity for hearing to be served by ~~registered or certified~~ mail upon every ~~railroad corporation or other~~ common carrier which is operating, or which has applied for a certificate to operate, in the territory proposed to be served by the applicant, and on other interested parties as determined by the commission.

SECTION 2. AMENDMENT. Section 49-18-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-21. Contract motor carriers - Notice of opportunity for hearing for permit. Upon the filing of an application for a permit, the commission shall cause notice of opportunity for hearing to be served by ~~registered or certified~~ mail upon every ~~railroad corporation or other~~ common carrier which is operating or which has applied for a certificate to operate in the territory proposed to be served by the applicant and on other interested parties as determined by the commission. Any such common carrier, and any other interested person, may request an oral evidentiary hearing and may offer testimony for or against the granting of such permit.

However, as a condition for offering testimony opposing an application at an oral evidentiary hearing, such interested party must file a protest and a request for an oral evidentiary hearing with the commission and the applicant within twenty days of receipt of the notice for opportunity for hearing and must indicate the nature of the protest, along with a list of witnesses to be called by the protestant and the approximate time needed to present the protestant's case. Any other interested person may offer testimony for the granting of a permit at such hearing.

SECTION 3. AMENDMENT. Section 49-18-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-23. Issuance of contract carrier permit - Factors considered. The commission is vested with power and authority to grant or deny, ~~after hearing,~~ the permit prayed for by a contract motor carrier, or to grant it for the partial exercise only of the privilege sought. It may attach to the exercise of the privilege granted by such permit, such terms and conditions as in its judgment will carry out the purposes of this chapter. No permit shall be granted unless the applicant has established to the satisfaction of the commission that the privilege sought will not endanger the safety of the public nor interfere with the public use of the public highways, nor impair the condition or maintenance of such highways directly or indirectly, nor impair the efficient public service of any authorized common carrier then adequately serving the same territory.

SECTION 4. AMENDMENT. Section 49-18-39.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-39.1. Motor vehicle leases. A common or contract motor carrier of property or passengers may transport property or passengers using a motor vehicle acquired by lease, with or without driver, from the owner of the motor vehicle. A lease of a motor vehicle need not be for any minimum duration.

Approved March 22, 1985

PUBLIC WELFARE

CHAPTER 520

HOUSE BILL NO. 1196
 (Committee on Social Services and Veterans Affairs)
 (At the request of the Department of Human Services)

COUNTY SUPPLEMENTAL SECURITY INCOME BENEFITS

AN ACT to amend and reenact section 50-01-09.2 of the North Dakota Century Code, relating to increased state reimbursements to counties for optional supplementation of supplemental security income benefits; and to repeal chapter 522 of the 1983 Session Laws.

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

SECTION 1. AMENDMENT. Section 50-01-09.2 of the Parent Volume for title 50 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-01-09.2. Reimbursement to counties by state for general assistance provided. Within the limits of legislative appropriations, the department of human services shall reimburse each county upon claim being made by the county, for one-half of the amounts expended on behalf of persons unable to provide themselves with a reasonable subsistence compatible with decency and health and who are not otherwise provided for under the laws of this state. Claim for reimbursement along with a certification of amounts paid shall be presented quarterly by the board of county commissioners to the department of human services. An amount not to exceed one-half of the sums so certified shall be paid to the county by the department of human services, except that beginning July 1, 1986, the department shall reimburse the county for sixty-five percent, and beginning July 1, 1987, the department shall reimburse the county for eighty percent of the cost of supplementary payments to or on behalf of those individuals residing in adult family care homes and custodial care homes who are in receipt of supplemental security income benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who are determined by the department to need assistance to enable them to meet the reasonable costs of custodial care in those homes, upon the audit and approval of the claim in the manner provided by law.

SECTION 2. REPEAL. Chapter 522 of the 1983 Session Laws is hereby repealed.

Approved April 15, 1985

CHAPTER 521

HOUSE BILL NO. 1166
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

HUMAN SERVICES DIVISIONS

AN ACT to amend and reenact sections 14-13-03, 23-16-08, 50-06-01.4, subsection 1 of section 50-19-01, sections 50-20-01, 50-20-02, and 50-20-04, and subsection 3 of section 50-25.1-02 of the North Dakota Century Code, relating to the divisions of the office of human services and the office of economic assistance and county administration of the department of human services.

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

SECTION 1. AMENDMENT. Section 14-13-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-13-03. Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "Appropriate authority in the receiving state" as used in paragraph 1 of Article V of the compact with reference to this state means the director of the ~~social~~ children and family services division of the department of human services.
2. "Appropriate public authorities" as used in Article III of the compact with reference to this state means the ~~social~~ children and family services division of the department of human services, and the division shall receive and act with reference to notices required by Article III.

SECTION 2. AMENDMENT. Section 23-16-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-16-08. Offering or advertising to dispose of infants prohibited. No hospital providing maternity care shall in any way offer to dispose of any child or advertise that it will give children for adoption or hold itself out, directly or indirectly, as being able to dispose of children, however, such hospitals may inform an unmarried mother of

child placing agencies licensed by the ~~social~~ children and family services division of the department of human services.

* SECTION 3. AMENDMENT. Section 50-06-01.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.4. Structure of the department. The department shall include the state hospital, an office of human services, an office of economic assistance and county administration, a vocational rehabilitation division including regional vocational rehabilitation offices, administrative and fiscal support services as the executive director deems necessary, and as many other subdivisions as the executive director may deem appropriate, or as may be provided by law.

1. The office of human services shall contain the following divisions:
 - a. Developmental disabilities division.
 - b. Mental health division.
 - c. ~~Social services division,~~ including an aging services unit and a children Children and family services unit division.
 - d. ~~Vocational rehabilitation division, including regional vocational rehabilitation offices collocated with regional human service centers~~ Aging services division.
 - e. Alcoholism and drug abuse division.
 - f. Crippled children's services division.
2. The office of economic assistance and county administration shall include the following divisions:
 - a. ~~Public Economic~~ economic assistance division, including a food stamp unit, a housing assistance unit, an assistance payments unit, an energy a fuel assistance unit, and a child support enforcement unit.
 - b. Medical ~~assistanc~~ services division.

Regional supervisors of economic assistance shall be collocated with regional human service centers and shall be responsible for maintaining a close working relationship between county social service boards and regional human service centers. The executive director of the department shall be responsible for consulting with and maintaining a close working relationship with the department of health; with the director of institutions and the superintendents of the Grafton state school, the school for the deaf, and the school

* NOTE: Section 50-06-01.4 was also amended by section 11 of House Bill No. 1062, chapter 311.

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.

SECTION 4. AMENDMENT. Subsection 1 of section 50-19-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Division" means the ~~social~~ children and family services division of the department of human services.

SECTION 5. AMENDMENT. Section 50-20-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-20-01. Births out of wedlock to be reported. All births out of wedlock in the state of North Dakota shall be reported to the ~~social~~ children and family services division of the department of human services within twenty-four hours after the birth occurs. The report shall include the date and place of birth, the sex of the child, the name of the mother, the name of the attending physician, and such other information as the division may require.

SECTION 6. AMENDMENT. Section 50-20-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-20-02. Births with congenital deformities to be reported. All births in North Dakota of children with a visible congenital deformity shall be reported to the ~~social~~ crippled children's services division within three days after such birth occurs. The report shall include the date and place of birth, the sex of the child, the names of the parents, the name of the physician or other person attending birth, a diagnosis and description of the deformity, and such other information as the division may require.

SECTION 7. AMENDMENT. Section 50-20-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-20-04. Report forms. The ~~social services division~~ department of human services shall prepare forms for reporting the information necessary to promote the best interest of a child born out of wedlock or with a congenital deformity. A supply of such forms ~~is to~~ shall be made available by the department of human services to maternity homes or hospitals and legally qualified physicians and others regularly attending births.

*** SECTION 8. AMENDMENT.** Subsection 3 of section 50-25.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Division" means the ~~social~~ children and family services division of the department of human services.

Approved March 14, 1985

* NOTE: Section 50-25.1-02 was also amended by section 2 of House Bill No. 1169, chapter 536.

CHAPTER 522

SENATE BILL NO. 2444
(Christensen)

NONAGENCY ADMINISTRATIVE HEARING OFFICERS

AN ACT to create and enact a new subsection to section 50-06-05.1 and a new subsection to section 54-12-01 of the North Dakota Century Code, relating to the powers and duties of the department of human services and the attorney general regarding administrative hearings.

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

SECTION 1. A new subsection to section 50-06-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

To provide an administrative appeal and hearing process for all claimants who are aggrieved by a decision of the department. Provided, however, that upon request of any claimant, the department shall refer the claimants appeal or request for administrative hearing to the attorney general for the appointment of a hearing officer who is not an employee of the department and who has not been involved in the decision from which the claimant has appealed.

SECTION 2. A new subsection to section 54-12-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

To appoint, upon request, hearing officers to conduct hearings pursuant to chapter 28-32 in those instances where a claimant requests that the hearing be conducted by an individual who is not employed by the agency which made the decision from which the claimant has appealed pursuant to section 50-06-05.1.

Approved March 27, 1985

CHAPTER 523

SENATE BILL NO. 2055
(Legislative Council)
(Interim Budget "C" Committee)

LONG-TERM CARE RENTAL EXPENSES LIMIT

AN ACT to provide for the department of human services to limit state reimbursement for rental expenses of long-term care facilities.

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

SECTION 1. Limitation on state reimbursement for rental expenses of long-term care facilities. The department of human services shall limit the reimbursement for rental expense paid by a provider of services when a provider sells its skilled nursing facility, intermediate care facility, boarding home for the aged and infirm, or other facility furnishing care to its residents, where a care rate is based, in part, upon property costs unique to that facility, to a third party who leases the facility or home back to the provider. The department's reimbursement for rental expense may not exceed the lesser of the rental expense paid by the provider or the cost of ownership of the facility or home. The cost of ownership includes depreciation, interest, real estate taxes, and other expenses properly related to the facility or home. The department of human services shall apply this limit to rates set for each facility's first fiscal year beginning on or after July 1, 1985, but shall consider, in setting such rates, all sales occurring on or after July 18, 1984.

Approved March 30, 1985

CHAPTER 524

SENATE BILL NO. 2276
(Senator Wenstrom)
(Representative Hoffner)

LONG-TERM CARE OMBUDSMEN

AN ACT to amend and reenact subsection 3 of section 50-10.1-01, sections 50-10.1-03, 50-10.1-05, 50-10.1-06, and subsection 1 of section 50-10.1-07 of the North Dakota Century Code, relating to long-term care ombudsmen.

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

SECTION 1. AMENDMENT. Subsection 3 of section 50-10.1-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Long-term care facility" means any skilled nursing facility, intermediate care facility, boarding home for the aged and infirm, nursing home as defined in subsection 3 of section 43-34-01, boardinghouse, or foster family care home for adults swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.

SECTION 2. AMENDMENT. Section 50-10.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.1-03. Duties of state long-term care ombudsman. The state long-term care ombudsman shall:

1. Investigate and resolve complaints about administrative actions that may adversely affect the health, safety, welfare, or personal or civil rights of ~~elder~~ persons in long-term care facilities.
2. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care facilities in the state.

3. Gather and disseminate information to public agencies about the problems of ~~elder~~ persons in long-term care facilities.
4. Train volunteers and assist in the development of citizen organizations to participate in the ombudsman programs.
5. Report to any state agency those factors found by the state long-term care ombudsman to relate to those duties of that agency which impact on the care given to residents of a long-term care facility in this state.
6. Act as an advocate for ~~aged~~ residents of long-term care facilities.
7. Carry out any activities consistent with the requirements of this chapter, including the delegation to regional or volunteer community long-term care ombudsmen of any duties imposed by this chapter, which the executive director of the department deems appropriate.
8. Adopt rules in accordance with chapter 28-32 consistent with and necessary for the implementation and enforcement of this chapter.

SECTION 3. AMENDMENT. Section 50-10.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.1-05. Chapter to be posted - Retaliation prohibited. A copy of this chapter shall be posted in a conspicuous place in each long-term care facility, along with a statement of the right to file a complaint concerning administrative actions which affect any resident and the address where a complaint may be filed. Each resident, the spouse of each resident having a spouse, and any legally appointed designated representative of a resident shall be provided with copies of the posted documents at the time the resident is admitted to the long-term care facility. However, each person who is a resident on July 1, 1983, the spouse of each resident having a spouse, and any legally appointed designated representative of a resident shall be provided with copies of the posted documents at that time. A long-term care facility, and its agents, may not take or threaten retaliatory action against a resident, employee, or any other person on account of the filing of a complaint by or on behalf of that resident, or on account of the providing of information to a long-term care ombudsman constituting or relating to a complaint.

SECTION 4. AMENDMENT. Section 50-10.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.1-06. Establishment of reporting system. The department shall establish a statewide uniform reporting system to collect and

analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The department shall submit this information to the appropriate state agency which is responsible for the licensing or certification of the long-term care facility involved and to the appropriate federal agency. Each state agency responsible for licensing or certification of long-term care facilities shall coordinate its activities with the statewide uniform reporting system by submitting to the department in a timely manner all complaints and information it receives on conditions that adversely affect the health, safety, welfare, or personal or civil rights of residents; provided, that the information is not privileged under the law.

SECTION 5. AMENDMENT. Subsection 1 of section 50-10.1-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A resident, or a legal representative guardian or attorney-in-fact, consents in writing to the release of the information and designates to whom the information shall be disclosed;

Approved March 22, 1985

CHAPTER 525

HOUSE BILL NO. 1170
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

FOSTER FAMILY CARE HOMES FOR ADULTS

AN ACT to amend and reenact sections 50-11-06.1 and 50-11-06.3 of the North Dakota Century Code, relating to the definition of foster family care home for adults and the requirement that such homes be licensed.

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

SECTION 1. AMENDMENT. Section 50-11-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11-06.1. Foster family care home for adults defined. As used in this chapter, the term foster family care home for adults shall mean any home means a licensed occupied private residence in which four or less fewer adults, who are eligible for or receiving public assistance and not related by blood or marriage to the licensee of said home, are received, kept, and provided with food, shelter, and care for hire or compensation.

SECTION 2. AMENDMENT. Section 50-11-06.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11-06.3. License required - Term - Revocation. No person shall keep, operate, conduct, or manage a foster family care home for adults as defined in this chapter; No person shall provide food, shelter, and care for adults in a private residence without holding a valid license issued by the department of human services as herein provided unless care is provided to only one person or to only two persons who are related to each other. The license shall not be valid for more than one year. Any license may be revoked by the department for violation of the provisions of this chapter and the rules which may be prescribed by the department. No person acting on behalf of any state, county, or local governmental entity may arrange for, promote or authorize payment for, care provided in a foster family care home for adults which does not have a valid license issued by the department.

Approved March 31, 1985

CHAPTER 526

HOUSE BILL NO. 1293
 (Representatives Nalewaja, DeMers, Haugland)
 (Senators Mushik, Todd)

EARLY CHILDHOOD FACILITY LICENSURE

AN ACT to amend and reenact sections 50-11.1-01, 50-11.1-02, 50-11.1-02.1, 50-11.1-03, 50-11.1-04, 50-11.1-06.1, 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3, 50-11.1-07.4, 50-11.1-07.5, 50-11.1-07.7, 50-11.1-08, 50-11.1-09, 50-11.1-11, and 50-11.1-12 of the North Dakota Century Code, relating to early childhood services, license requirements for early childhood facilities, and penalties; to repeal section 50-11.1-04.1 of the North Dakota Century Code, relating to applications for child care certificates and licenses; and to provide an appropriation.

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

SECTION 1. AMENDMENT. Section 50-11.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-01. Purpose. The purpose of this chapter is to assure that children receiving supplemental parental care early childhood services be provided food, shelter, safety, comfort, supervision, and learning experiences commensurate to their age and capabilities, so as to safeguard the health, safety, and development of those children.

SECTION 2. AMENDMENT. Section 50-11.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Child care center" means a child care an early childhood facility where supplemental parental care is regularly early childhood services are provided to nineteen or more children.

2. "Child care facility" means any facility where supplemental parental care is regularly provided, whether the facility is known as a day care home, day care center, day nursery, nursery school, kindergarten, child play school, progressive school, child development center, preschool or known by any other name.
3. "County agency" means the county social service board in each of the counties of the state.
- 4- 3. "Department" means the department of human services.
4. "Early childhood facility" means any facility where early childhood services are provided, whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool or known by any other name.
5. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.
 - b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15-45 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15-34.1-03.
 - d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
 - e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, other than employment, on or near the premises.

- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism or other classes for religious instruction.
- g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
- h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- i. Headstart programs that are federally funded and meet federal headstart standards.
6. "Family child care home" means an occupied private residence in which supplemental parental care is regularly early childhood services are provided for no more than seven children from more than one family or no more than four children ages two and under at any one time.
- 6- 7. "Group child care home" or "group child care facility" means a child care facility where supplemental care is regularly early childhood services are provided for eight to through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight children.
- 7- 8. "In-home provider" means any person who provides supplemental parental care early childhood services to children in the children's home.
- 8- 9. "License" means the right, authority, or permission granted by the department to operate a family child care home, group child care facility or, child care center, or the right, authority, or permission, granted by the department, to hold out a family child care home as inspected and approved by the department, or preschool educational facility.
10. "Multiple licensed facility" means an early childhood facility that provides more than one type of early childhood services.
11. "Preschool educational facility" means a facility that offers early childhood services and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that serves no child for more than three hours per day.
- 9- 12. "Registrant" means the holder of a registration certificate document issued by the department in accordance with the provisions of this chapter.

- ~~10-~~ 13. "Registration" means the process whereby the board department maintains a record of all in-home providers who have certified stated that they have complied or will comply with the prescribed standards and promulgated regulations adopted rules.
- ~~11-~~ 14. "Registration certificate document" is a written instrument issued by the department to publicly document that the certificate holder registrant has certified compliance complied with this chapter and the applicable regulations rules and standards as prescribed by the department.
12. "Supplemental parental care" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is, or is anticipated to be, ongoing for periods of four or more hours per day or for three or more days per week. Supplemental parental care shall not include-
- a- Substitute parental child care provided pursuant to chapter 50-11.
 - b- Child care provided in any educational facility, whether public or private, in grade one or above.
 - c- Child care provided in a kindergarten which has been established pursuant to chapter 15-45.
 - d- Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
 - e- Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, other than employment, on or near the premises.
 - f- Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism or other classes for religious instruction.
 - g- Summer resident or day camps for children.
 - h- Child care provided in a preschool educational facility which offers and follows a curriculum and course of study designed primarily to enhance the educational development of the children in care.

employs a supervising instructor who possesses at least a bachelor's degree or a teaching certificate, complies with fire safety standards applicable to educational or school facilities for elementary or younger students, which serves no child for more than four hours per day, and which has a governing body or advisory committee, consisting of at least five members, which meets at least quarterly and which includes a majority of parents who have children in care-

- i- Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult-

SECTION 3. AMENDMENT. Section 50-11.1-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-02.1. Number of children in care program - How determined. For the purpose of determining the number of children in a child care an early childhood facility, all children of the operator or employees, present in the facility and under the age of fourteen twelve years, shall be counted except for purposes of determining fire, safety, or zoning requirements.

SECTION 4. AMENDMENT. Section 50-11.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-03. Operation of family child care home, group child care facilities facility, preschool educational facility, and child care centers center - License required - Fees.

1. A license for a family child care home is required if early childhood services are provided for four or more children ages twenty-four months and under or six or more children at any one time. Those persons not required by this subsection to hold a family child care license may voluntarily apply for and receive such a license.
2. No person, partnership, firm, corporation, association, or nongovernmental organization shall may establish or operate a group child care facility, preschool educational facility, or child care center unless licensed to do so by the department. No governmental organization shall may establish or operate a group child care facility, preschool educational facility, or child care center without first certifying, to the department, that it has complied with all rules and regulations applicable to group child care facilities, preschool educational facilities, or child care centers.

3. An applicant for a license must submit the following nonrefundable fees with the application:
- a. The operator of a family child care home applying for a license shall pay an annual license fee of twenty dollars or if the license is issued for a two-year period, a fee of thirty-five dollars.
 - b. The operator of a group child care home applying for a license shall pay an annual license fee of twenty-five dollars or if the license is issued for a two-year period, a fee of forty-five dollars.
 - c. The operator of a preschool educational facility applying for a license shall pay an annual license fee of thirty dollars or if the license is issued for a two-year period, a fee of fifty-five dollars.
 - d. The operator of a child care center applying for a license shall pay an annual license fee of forty dollars or if the license is issued for a two-year period, a fee of seventy-five dollars.
 - e. The operator of a multiple licensed facility applying for a license shall pay an annual license fee of fifty dollars or if the license is issued for a two-year period, a fee of ninety-five dollars.
4. In addition to any criminal sanctions or other civil penalties which may be imposed pursuant to law, the operator of an early childhood facility who, after being given written notice by a representative of the department, continues to provide early childhood services without a license as required by this section is subject to a civil penalty of fifty dollars per day for each day of operation without such license. The civil penalty may be imposed by the courts or by the department through an administrative hearing pursuant to chapter 28-32.

* SECTION 5. AMENDMENT. Section 50-11.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term. Applications for ~~child care~~ early childhood facility licenses ~~shall~~ must be made on forms provided, in the manner prescribed, by the department. The county agency shall investigate the applicant's activities and proposed standards of care and shall make an inspection of ~~the facility~~ all facilities applying for a license. A ~~The~~ applicant for a license and the applicant's employees, and if the license is for an occupied private residence every person living or working in that residence, may be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a

* NOTE: Section 50-11.1-04 was also amended by section 1 of House Bill No. 1354, chapter 530.

finding of probable cause for child abuse or neglect filed against them. Except as otherwise provided, the department shall grant a license for the operation of a child care an early childhood facility or child care center shall be granted by the department upon a showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide for the health and safety for all children who may be received;
2. The persons in charge of the facility and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules and regulations of the department;
3. The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department; and
4. The facility has not had a previous license revoked within the one hundred eighty days prior to the date of the current application; and
5. The facility has paid its license fees and any penalties assessed against the facility as required by section 50-11.1-03.

The license issued to the operator of an early childhood facility shall be in force and effect for a period of not more than one year two years. Previously licensed facilities must make the same showing as initially licensed facilities.

SECTION 6. AMENDMENT. Section 50-11.1-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-06.1. Conviction not bar to licensure - Exceptions. Conviction of an offense shall not disqualify a person from licensure under this chapter unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or proprietor of a child care an early childhood facility or as an in-home provider, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 7. AMENDMENT. Section 50-11.1-07 of the North Dakota Century Code is hereby amended and reenacted to read 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 ~~supplemental parental care~~ early childhood services in any ~~child care~~ early childhood facility, and the qualifications of any in-home provider seeking or holding a license or registration ~~certificate document~~ under the provisions of this chapter. Upon request of the department or the county agency, the state department of health or the state fire marshal, or his designee, shall inspect any facility for which a license is applied for or issued and shall report its 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 records and information maintained with respect to children receiving ~~supplemental parental care~~ early childhood services are confidential and must be properly safeguarded and shall 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.

SECTION 8. AMENDMENT. Section 50-11.1-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-07.1. Notice. After each inspection or reinspection, the county agency shall, by certified mail, send copies of any correction order or notice of noncompliance, to the ~~child care~~ early childhood facility.

SECTION 9. AMENDMENT. Section 50-11.1-07.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-07.2. Correction orders. Whenever the county agency finds, upon inspection of a ~~child care~~ an early childhood facility, that the facility is not in compliance with the provisions of this chapter, or the rules and regulations promulgated thereunder, a correction order shall be issued to the facility. The correction order shall cite the specific statute or regulation violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order shall also specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.

SECTION 10. AMENDMENT. Section 50-11.1-07.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-07.3. Reinspections. A ~~child care~~ An early childhood facility issued a correction order under section 50-11.1-07.2 shall be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the facility has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order shall be mailed by certified mail to the facility. The notice shall specify the violations not corrected and the penalties assessed in accordance with section 50-11.1-07.5.

SECTION 11. AMENDMENT. Section 50-11.1-07.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-07.4. Fiscal sanctions. A ~~child care~~ An early childhood facility, if issued a notice of noncompliance with a correction order, shall be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules promulgated pursuant to subsection 2 of section 50-11.1-08. The fiscal sanction shall be assessed for each day the facility remains in noncompliance after the allowable time period for the correction of deficiencies ends and shall continue until a notice of correction is received by the county agency in accordance with section 50-11.1-07.6. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

SECTION 12. AMENDMENT. Section 50-11.1-07.5 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-07.5. Accumulation of fiscal sanctions. A ~~child care~~ An early childhood facility shall promptly notify the county agency in writing when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the county agency, the daily fiscal sanction assessed for the deficiency shall stop accruing. The facility shall be reinspected within three working

days after receipt of the notification. If, upon reinspection, it is determined that a deficiency has not been corrected, the daily assessment of fiscal sanction shall resume and the amount of fiscal sanction which otherwise would have accrued during the period prior to resumption shall be added to the total assessment due from the facility. The county agency shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction shall be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32; provided, that written request for the hearing is made to the department within ten days of the notice of resumption.

SECTION 13. AMENDMENT. Section 50-11.1-07.7 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-07.7. Disposition of fiscal sanctions. Any fiscal sanction which shall be is collected for any violation of this chapter or of ~~regulations promulgated thereunder~~ rules adopted pursuant to this chapter, shall be paid into the state treasury for the general fund, after the costs of recovering the fiscal sanction are deducted therefrom.

SECTION 14. AMENDMENT. Section 50-11.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-08. Minimum standards - Rules and regulations - Inspection by a governmental unit. The department may:

1. Establish reasonable minimum standards for the operation of ~~child care~~ early childhood facilities, and the registration of in-home providers. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.
2. Take such action and make such reasonable rules and regulations for the regulation of ~~supplemental parental care~~ early childhood services as may be necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.
3. Authorize a governmental unit to:
 - a. Inspect any home or facility for which a license is applied for or issued under this chapter; and
 - b. Certify to the department that the home or facility meets the requirements of this chapter and the minimum standards prescribed by the department.

SECTION 15. AMENDMENT. Section 50-11.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-09. Revocation of license or registration certificate document. The department may revoke the license of any ~~child care~~ early childhood facility, or the registration ~~certificate document~~ of any in-home provider upon proper showing of any of the following:

1. Any of the applicable conditions set forth in section 50-11.1-04 as prerequisites for the issuance of the license no longer exist.
2. The licensee or registrant is no longer in compliance with the minimum standards prescribed by the department.
3. The license or registration ~~certificate document~~ document was issued upon fraudulent or untrue representation.
4. The licensee or registrant has violated any rules ~~and regulations~~ of the department.
5. The licensee or registrant has been guilty of an offense determined by the department to have a direct bearing upon a person's ability to serve the public as a licensee or registrant.
6. The licensee has been convicted of any offense and the ~~board department~~, acting pursuant to section 12.1-33-02.1, has ~~determined~~ that he has not been sufficiently rehabilitated.

SECTION 16. AMENDMENT. Section 50-11.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-11. Public agency purchase of supplemental parental care early childhood services. No agency of state or local government ~~shall~~ may purchase ~~supplemental parental care~~ early childhood services, including care provided by or in the home of a relative, unless the ~~day care center, registered family day care home, early childhood facility or child care early childhood services~~ attendant is licensed, registered, or approved by the department.

SECTION 17. AMENDMENT. Section 50-11.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-12. Violation of chapter or regulations - Injunction. The department may seek injunctive action against a ~~child care~~ an early childhood facility in the district court through proceedings instituted by the attorney general on behalf of the department if:

1. There is a violation of this chapter or a ~~regulation promulgated rule adopted~~ thereunder;
2. A ~~child care~~ An early childhood facility, after notice and opportunity for hearing on the notice of noncompliance, or on the resumption of the fiscal sanction, or after administrative hearing confirming and upholding the fiscal sanction, does not pay a properly assessed fiscal sanction in accordance with section 50-11.1-07.6.

SECTION 18. REPEAL. Section 50-11.1-04.1 of the North Dakota Century Code is hereby repealed.

SECTION 19. CONTINUING APPROPRIATION. There is hereby appropriated on a continuing basis all fees collected under subsection 2 of section 50-11.1-03 to the counties that collected those fees. These funds must be used for the purpose of investigating the eligibility of applicants for early childhood facility licenses issued by the department of human services.

Approved April 16, 1985

CHAPTER 527

HOUSE BILL NO. 1656

(Strinden)

(Approved by the Committee on Delayed Bills)

GRAFTON STATE SCHOOL AND STATE HOSPITAL
CARE EXPENSES

AN ACT to create and enact a new section to chapter 25-02, five new sections to chapter 25-04, and a new chapter to title 50 of the North Dakota Century Code, relating to payment and waiver of payment of expenses of care and treatment for patients at the state hospital and Grafton state school and the imposition and collection of fees and expenses by the department of human services; and to repeal chapter 25-09 of the North Dakota Century Code, relating to expenses for care of patients at the state hospital and Grafton state school.

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

SECTION 1. A new section to chapter 25-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 treatment in the state hospital, the person shall be sent to the state hospital 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, and, if the residence is found to be in another state or country, the supervising department may arrange for transportation of the person to the place of legal residence or legal settlement. The supervising department may enter into reciprocal agreements with other states regarding the mutual exchange, return, and transportation of persons requiring treatment who are within one state but have legal residence or legal settlement in another state. The agreements must not contain any provision conflicting with any law of this state.

SECTION 2. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 state school, the person shall be sent to the state school 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 state school without depriving a North Dakota resident of care and treatment at the state school 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 mentally deficient persons who are within one state but have legal residence or legal settlement in another state. The agreements must not contain any provision conflicting with any law of this state.

SECTION 3. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 Grafton state school shall, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health. The supervising department shall, if possible, recover monthly from the patient or from a discharged patient expenses for care and treatment. If any patient is receiving social security benefits or is a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veterans' administration, such 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 such benefits to be paid directly to the patient shall, upon approval of the director of institutions, be credited to the patient's personal account from any money thus received.

SECTION 4. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Nonresident patients - Nonresident patients at the Grafton state school and nonresident responsible relatives of patients are liable for the full costs of care and treatment at the state school. For the purposes of this Act:

1. "Nonresident patient at the Grafton state school" includes:
 - a. Any patient at the school who is under eighteen years old and whose responsible relative is not a bona fide resident of this state.

- b. Any Indian patients for whom the United States government has, through its statutes and regulations, a responsibility for their care.
2. "Nonresident responsible relative" includes the patient's nonresident spouse, father, or mother. It includes the bureau of Indian affairs in those cases involving Indian patients for whom the United States government has, through its statutes and regulations, a responsibility for their care.

SECTION 5. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Expenses chargeable against guardianship estate of patient - Restrictions.
The expenses incurred by the state for the care and treatment of any patient over twenty-one years of age at the Grafton state school shall be charged against the guardianship estate of such patient, if he has such an estate, subject to the following restrictions:

1. No part of such estate shall be taken for such purpose if the patient has dependents within the United States dependent upon the estate for support and the taking of all or a portion of such estate would result in undue hardship to such dependents.
2. No real property belonging to such estate shall be sold during the lifetime of the patient except for the maintenance and support of his or her dependents, unless it is shown that the sale of such property will not result in undue hardship to such dependents, and in either such event, it shall be sold only upon the order of the county court having jurisdiction of the estate, with the consent of the director of institutions.
3. No personal property belonging to such estate shall be sold within five years from the date upon which the patient was sent to the state school unless such property is ordered sold by the county court having jurisdiction of the estate for the reason that such property is likely to deteriorate in value during the time herein specified.
4. No claim shall be made to recover from the estate of a former resident of the state school who has left the state school and married, and leaves a spouse or issue dependent upon such estate.

SECTION 6. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Waiver of payment - Use of income tax data - Confidentiality - Definition.

1. The patient, former patient, 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 state school. Such application shall be accompanied by proof of the patient's or the estate of the patient's inability to pay. 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. 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. Any patient, 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. 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. When any official or employee of the state school 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 shall 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. As used in this chapter, "supervising department" means the director of institutions, or the director's designee.

SECTION 7. A new chapter to title 50 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, "department" means the department of human services, including the state hospital.

Fees for services at regional centers. The department may charge and collect fees and expenses for services provided through its regional human service centers, and may authorize charging of fees for child support services. The department may establish fee scales which recognize the service recipient's or responsible relative's ability

to pay. The department shall adopt such rules as are necessary to implement this chapter and to define terms used in this chapter.

Fees and expenses chargeable against patients. Expenses for care and treatment of each patient at the state hospital must be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health. The department shall recover monthly expenses for care and treatment. The department shall not recover expenses under this chapter for care and treatment of a patient transferred to the state hospital from a jail or regional corrections center. If any patient is receiving social security benefits or is a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veteran's administration, the expenses are a current claim against the patient and may be recovered monthly by the department except that any amount required by the payor of the benefits to be paid directly to the patient shall be credited to the patient's personal account from any money thus received.

Liability for payment. The recipient, patient, recipient's or patient's estate and spouse are liable for fees and expenses for services rendered by the department, through its regional human service centers, and for care and treatment at the state hospital. The parents of a recipient or patient are liable for fees and expenses incurred prior to the eighteenth birthday of the recipient or patient.

Handicapped patients - Limitation. Notwithstanding any other provision of this chapter, no handicapped patient under twenty-one years of age or the estate or the parent of such patient may be charged for educational or related services provided at the state hospital. However, the department shall have 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, workmen's compensation, or medical care and disability provisions of programs administered by the department. For the purposes of this section, "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, shall be paid by the state hospital, 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, 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 such agency and political subdivision shall be liable. The department of public instruction may adopt rules necessary to implement the provisions of this section.

Application for waiver of fees and expenses - Review procedure.

1. Any person liable for the expenses of care and treatment at the state hospital may make application to the department to pay less than the expenses charged. The application shall be accompanied by proof of the applicant's inability to pay. Any person who seeks relief from the payment of expenses for services provided by the state hospital shall do so with the understanding that the department may verify any statement made in such application by a request for information from financial institutions, including commercial banks. Notwithstanding the provisions of section 57-38-57, this verification may include a review of the 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. Upon receipt of an application made pursuant to subsection 1, the department shall direct the county social service board of the applicant's county of residence to determine the applicant's ability to pay all, a portion, or none of the expenses charged. The department shall approve, reject, or amend the determination made by the county social service board. The determination made by the department may be appealed to the district court of the applicant's county of residence.

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 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 must 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 must provide to the department a statement of assets and disbursements.

Reduction or write-off of accounts - Reports required. The department may authorize the reduction or writing off of a recipient's or patient's past due account from the department's financial records upon making a determination that the account is not collectible. The department, thirty days after the close of each fiscal year, shall present a detailed report to the legislative audit and fiscal review committee on the status of accounts receivable for that fiscal year, which report must include the following:

1. An aging by recipient classification of accounts remaining unpaid.
2. The amounts by recipient classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

Expenses chargeable against guardianship estate of patient - Restrictions.

The expenses incurred by the state for the care and treatment of any patient at the state hospital shall 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 shall 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 shall 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 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 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 the provisions of this section, the county 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.

State's attorneys or attorney general to bring action for expenses - Contract for collections.

1. Upon the request of the department to a state's attorney or the attorney general, in regard to fees and expenses charged pursuant to this chapter, the state's attorney or the attorney general shall bring an action against the person or estate liable for the fees and expenses for the payment of the amount due the state.
2. The department is permitted to contract with collection agencies for the collection of amounts due the state under this chapter.

Statute of limitations not bar to recovery. No statute of limitations or similar statute or the doctrine of laches shall bar the right of recovery for fees and expenses under this chapter, but this section does not apply to claims that may be otherwise barred by law prior to July 1, 1961. It is not necessary to bill currently any person for those accounts determined to be inactive, or currently uncollectible, or for which it has been determined as provided by law that there is no present ability to pay. Current billings shall be made for amounts chargeable by law or for which it has been determined the patient or responsible relative presently has an ability to pay, but the manner of billing shall in no way affect the total amount due.

* **SECTION 8. REPEAL.** Chapter 25-09 of the North Dakota Century Code is hereby repealed.

Approved April 4, 1985

- * **NOTE:** Section 25-09-02 which was repealed by section 8 of House Bill No. 1656 was amended by section 10 of House Bill No. 1062, chapter 311.

CHAPTER 528

SENATE BILL NO. 2488
(Senators Stenehjem, Christensen)
(Representatives Gates, Conmy)

FOSTER CARE PROVIDERS INFORMATION

AN ACT to amend and reenact section 50-11-06.6 of the North Dakota Century Code, relating to information which must be furnished by the department of human services or county social service boards to foster care providers.

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

SECTION 1. AMENDMENT. Section 50-11-06.6 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11-06.6. Department to furnish information when requested.

1. It shall be the duty of the department of human services whenever called upon by any person, organization, or corporation interested in establishing such a foster family care home for children or adults to furnish information concerning the minimum requirements for such home, and concerning the need for such foster family care home for children or adults in any given community.
2. Any person, organization, or corporation is entitled, upon request, to be advised by the department or county social service boards regarding the policy, procedure, and intentions of the department or county social service boards toward placement of children in that person's, organization's, or corporation's facility if:
 - a. The person, organization, or corporation is licensed to provide foster care for children under this chapter and has not received a placement for twelve months or more; or
 - b. The person, organization, or corporation is applying for or renewing its license to provide foster care for children under this chapter.

Approved March 28, 1985

CHAPTER 529

SENATE BILL NO. 2486
(Senators Stenehem, Christensen)
(Representative Gates, Conmy)

FOSTER CARE LICENSURE

AN ACT to create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to the licensing of foster care homes and facilities for children and adults; and to amend and reenact section 50-11-08 of the North Dakota Century Code, relating to the denial or revocation of a foster care license.

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

SECTION 1. A new section to chapter 50-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

License approval or denial - Time requirements. Except as otherwise provided in this section, an application to the department for a license required by this chapter to provide foster care to adults or children must be approved or denied within sixty days of its receipt by the department of human services. The department has an additional forty-five days to grant or deny an initial license required by this chapter if the department notifies the applicant that the additional time is necessary.

SECTION 2. AMENDMENT. Section 50-11-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11-08. Denial or revocation of license - Hearing - Appeals. Before any application for a license under the provisions of this chapter shall be is denied, or before revocation of any such license shall take takes place, written charges as to the specific reasons therefor, a copy of the statutes and department rules authorizing such action, and notice of the applicant's or licensee's right to a hearing on the matter before the department shall be served upon the applicant or licensee. Such The applicant or licensee shall also be notified in writing of his or her right to be represented at such hearing by counsel, to examine all files and documents in the custody of the department regarding the applicant or licensee, to present witnesses at the hearing on behalf of the applicant or licensee and to present documentary evidence, to present testimony

and cross-examine adverse witnesses, and the right to an impartial hearing officer. The applicant or licensee shall have has the right to a hearing before the department of human services if such the hearing is requested within ten twenty days after service of the written charges. The department must hold the hearing within sixty days after the hearing request unless the applicant or licensee agrees to a later date. At any such hearing, the evidence submitted by the department in support of its denial or revocation of the applicant's or licensee's license must be limited to supporting only those reasons which were given by the department in its original notice of denial or revocation to the applicant or licensee. An applicant or licensee may appeal under the provisions of chapter 28-32 any final decision of the department regarding the application for or issuance or renewal of a license required by this chapter.

Approved March 28, 1985

CHAPTER 530

HOUSE BILL NO. 1354
(Rydell)

CHILD CARE LICENSURE

AN ACT to amend and reenact section 50-11.1-04 of the North Dakota Century Code, relating to prerequisites for the issuance of a child care license; and to provide an effective date.

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

* SECTION 1. AMENDMENT. Section 50-11.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term. Applications for child care licenses shall be made on forms provided, in the manner prescribed, by the department. The county agency shall investigate the applicant's activities and proposed standards of care and shall make an inspection of the facility. A license for the operation of a child care facility or child care center shall be granted by the department upon a showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide for the health and safety for all children who may be received;
2. The persons in charge of the facility and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules and regulations of the department;
3. The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department; and
4. The facility has not had a previous license revoked within the one hundred eighty days prior to the date of the current application; and

* NOTE: Section 50-11.1-04 was also amended by section 5 of House Bill No. 1293, chapter 526.

5. The group child care or child care center facility maintains at all times during which supplemental parental care 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.

The license shall be in force and effect for a period of not more than one year. Previously licensed facilities must make the same showing as initially licensed facilities.

SECTION 2. EFFECTIVE DATE. Section 1 of this Act becomes effective on July 1, 1987.

Approved March 31, 1985

CHAPTER 531

SENATE BILL NO. 2081
(Legislative Council)
(Interim Judiciary "B" Committee)

CHARITABLE ORGANIZATION EXPENSES

AN ACT to repeal section 50-22-04.1 of the North Dakota Century Code, relating to limitations on the amount that a charitable organization may incur for solicitation and fundraising expenses.

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

SECTION 1. REPEAL. Section 50-22-04.1 of the 1983 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 27, 1985

CHAPTER 532

SENATE BILL NO. 2082
(Legislative Council)
(Interim Judiciary "B" Committee)

CHARITABLE SOLICITATION AGREEMENTS AND FRAUD

AN ACT to create and enact two new sections to chapter 50-22 of the North Dakota Century Code, relating to the use of fraud to solicit contributions, and the filing of charitable solicitation agreements with the secretary of state.

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

SECTION 1. Two new sections to chapter 50-22 of the North Dakota Century Code are hereby created and enacted to read as follows:

Fraud - Misrepresentation. No charitable organization, professional fundraiser, or professional solicitor, or any agent or employee of a charitable organization, professional fundraiser, or professional solicitor, may use any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the solicitation of a contribution for or on behalf of a charitable organization.

Filing. Every contract, written agreement, or written statement of the nature of the arrangement to prevail in the absence of a contract between a professional fundraiser or professional solicitor and a charitable organization shall be filed by the professional fundraiser and the charitable organization with the secretary of state within ten days after such contract, written agreement, or written statement is concluded.

Approved March 22, 1985

CHAPTER 533

SENATE BILL NO. 2053
(Legislative Council)
(Interim Budget "C" Committee)

LONG-TERM CARE FACILITY REIMBURSEMENT

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to reimbursement by the department of human services to long-term care facilities for care provided to persons under the medical assistance program.

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

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reimbursement of long-term care facility - Limitation - Allowable costs.
The department of human services shall reimburse a long-term care facility for bad debts expense; personal comfort items as may be determined proper by the department, but including the cost of telephone, television, and radio located in patient accommodations; and customary advertising costs incurred by long-term care facilities. No reimbursement may be made under this section to any long-term care facility that charges private pay patients a daily room rate that exceeds the rate paid by the department for persons eligible under the medical assistance program. The department may not limit reimbursements for compensation of administrators, fees of the board of directors, pension expense, and other costs of administration, except to the extent those costs exceed the costs of the applicable percentile group established by the department for those costs of long-term care facilities.

Approved April 11, 1985

CHAPTER 534

HOUSE BILL NO. 1168
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

NONINSTITUTIONAL PERSONAL CARE

AN ACT to amend and reenact sections 50-24.2-01 and 50-24.2-02 of the North Dakota Century Code, relating to noninstitutional personal care and family home care; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 50-24.2-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.2-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Adult foster care" means those services provided by a licensed foster family care home as defined under section 50-11-06.1.
2. "County agency" means the county social service board.
3. "Department" means the department of human services.
4. "Eligible elderly or disabled person" means an individual:
 - a. Who has been determined eligible for the receipt of medical assistance under chapter 50-24.1, or who would be determined eligible but for the fact that the individual's available income, reduced by the cost of incurred medical expenses, exceeds the maximum amount allowed in establishing such eligibility, provided that the excess is no more than the maximum rate set under section 50-24.2-02;
 - b. Who has been determined by the department to have a medical need for services provided in a skilled or intermediate care facility or, if a former resident of Grafton state school or San Haven released after

August 31, 1982, who has been determined by the department to have a developmental need for services provided in an intermediate care facility for the developmentally disabled; and

- c. Who is at least sixty-five years of age or disabled as defined by the rules of the department.
5. "Family home care" means the provision of room, board, supervisory care and personal services to an eligible elderly or disabled persons person by the spouse, parent, or grandparent, or the adult children child, brother, sister, or grandchild of an the eligible elderly or disabled person.
6. "Remedial services" means those services, provided in a licensed boarding home for the aged and infirm, an adult foster care home, or a family home supervised by a county agency, which produce the maximum reduction of physical or mental disability and restoration of the eligible elderly or disabled person's best possible functional level.
7. "Rest home services" means those services provided by boarding homes for the aged and infirm licensed under chapter 50-18-

SECTION 2. AMENDMENT. Section 50-24.2-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.2-02. Payment and election for noninstitutional personal care on behalf of elderly and disabled persons. From funds otherwise available for payments under chapter 50-24.1, the department shall make payment on behalf of eligible elderly or disabled persons who elect to receive family home care which is supervised and approved by the county agency, or adult foster care, or rest home services. If the alternative care is elected, the payment may be made directly to the eligible elderly or disabled person, to the protective payee of such person, or to the individual or entity providing remedial services on behalf of the eligible elderly or disabled person. If direct payment will cause a reduction in the amount of benefits, received by the eligible elderly or disabled person, through title XVI or title XIX of the Social Security Act, the county agency shall make any payment to the provider of the remedial services. Rates of payment, to be determined by the department, may not exceed the nonfederal share of the statewide average of payments for intermediate care under chapter 50-24.1. The determination whether family home care, or adult foster care, or rest home care will be received as an alternative to skilled or intermediate care is the sole responsibility of the elderly or disabled individual, or guardian of such person, if any, in consultation with an attending physician and family members.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 16, 1985

CHAPTER 535

SENATE BILL NO. 2204
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

INTERMEDIATE CARE FACILITY RESIDENT ASSESSMENT

AN ACT to provide for a program of preadmission assessment of the health and social needs for all prospective residents of skilled nursing facilities, intermediate care facilities, or hospital swing-bed facilities who are, or within one hundred eighty days of admission may become, eligible for medical assistance program benefits.

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

SECTION 1. Assessment mechanism - Establishment. The department of human services shall establish a mechanism to assess, prior to admission to a skilled nursing facility, intermediate care facility, or a hospital swing-bed facility approved to furnish skilled or intermediate care services, the health and social needs of medical assistance recipients and individuals who may become eligible for medical assistance within one hundred eighty days of admission to such facilities.

SECTION 2. Assessment process - Professional involvement. The assessment process shall involve the services of a registered nurse, a social worker, and such other personnel or professionals as may be determined appropriate by the department. A physician shall be available for consultation. The consulting physician shall be a part of the assessment mechanism with respect to any recommendation made in the course of a consultation. The individual's attending physician may be present during the assessment of the individual if that physician chooses to participate. If the individual is being discharged from an acute care facility, a discharge planner from that facility may be present, at the facility's request, during the assessment of the individual. The individual's attending physician and a discharge planner from an acute care facility discharging the individual may participate in discussions, but not in any recommendation made pursuant to section 3 of this Act unless delegated, by the department of human services, the authority to make recommendations.

SECTION 3. Department of human services - Powers and duties. The department of human services shall have the following powers and duties which it may delegate to any acute care facility which provides discharge planning services approved by the department:

1. To seek cooperation from other public and private agencies in the community which offer services to disabled and elderly persons.
2. To provide information and education to the general public regarding availability of the assessment program.
3. To accept referrals from individuals, families, human services professionals and nursing home personnel.
4. To assess the health and social needs of referred individuals.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare recommendations for individuals receiving assessment program services as to the need for skilled nursing care, or intermediate care as provided in a facility, or other care which is available in the community.

SECTION 4. Assessment of persons. Prior to admission to a skilled nursing facility or an intermediate care facility, the department shall assess the needs of all persons receiving medical assistance and, if requested to do so, of all persons who, due to income and resource considerations, reasonably anticipate the necessity to apply for medical assistance within one hundred eighty days of admission to a nursing home, except patients transferred from other nursing homes or patients who, having entered acute care facilities from nursing homes, are returning to nursing home care. Any other interested person may be assessed upon payment of a fee based upon a sliding fee scale to be established by the department of human services.

Approved April 11, 1985

CHAPTER 536

HOUSE BILL NO. 1169
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

CHILD ABUSE AND NEGLECT

AN ACT to create and enact a new section to chapter 50-25.1, a new subsection to section 50-25.1-02, and a new subsection to section 50-25.1-11 of the North Dakota Century Code, relating to child abuse and neglect; to amend and reenact section 12.1-20-01, subsection 3 of section 50-25.1-02, sections 50-25.1-04.1, 50-25.1-05, subsection 2 of section 50-25.1-05.2, and sections 50-25.1-09 and 50-25.1-13 of the North Dakota Century Code, relating to sex offenses and child abuse and neglect; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 12.1-20-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-20-01. General provisions.

1. In sections 12.1-20-03 through 12.1-20-08:
 - a. When the criminality of conduct depends on a child's being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen;
 - b. When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.
2. In sections 12.1-20-04 through 12.1-20-09, an offense excludes conduct with an actor's spouse. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation, a temporary or permanent adult abuse protection order, or an interim order issued in connection with a divorce or separation action. Where an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse as an

accomplice in an offense which he causes another person to perform.

- 3. No If the alleged victim was an adult, not otherwise incompetent to make complaint, no prosecution may be instituted or maintained under sections 12.1-20-03 through 12.1-20-08 or section 12.1-20-12 unless the alleged offense was brought to the notice of public authority within three months of its occurrence or, where the alleged victim was a minor or otherwise incompetent to make complaint, within three months after a parent, guardian, or other competent person specifically interested in the victim, other than the alleged offender, learned of the offense.
- 4. If the alleged victim was a minor or otherwise incompetent to make complaint, no prosecution may be instituted or maintained under sections 12.1-20-03 through 12.1-20-08 or section 12.1-20-12 unless the alleged offense was brought to the notice of public authority within three months after a parent, guardian, or other competent person specifically interested in the victim, learned of the offense. The three-month limitation does not begin to apply unless the person learning of the offense is someone other than the offender or a spouse, child, sibling, or parent of the offender.

* SECTION 2. AMENDMENT. Subsection 3 of section 50-25.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 3. "Division" means the social services division of children and family services of the department of human services.

SECTION 3. A new section to chapter 50-25.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Employee discipline prohibited. An employer who imposes any form of employee discipline against an employee solely because that employee reported having reasonable cause to suspect that a child was abused or neglected shall be guilty of a class B misdemeanor. It shall be a defense to any charge brought under this section that the presumption of good faith, described in section 50-25.1-09, has been rebutted.

SECTION 4. A new subsection to section 50-25.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team

* NOTE: Section 50-25.1-02 was also amended by section 8 of House Bill No. 1166, chapter 521.

with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, shall be staff members of the public or private agencies which they represent or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three members.

SECTION 5. AMENDMENT. Section 50-25.1-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-04.1. State child protection team - How created - Duties. The director of the division shall name the members of the state child protection team. The members shall be appointed for three-year staggered terms. The member who represents the division shall serve as chairperson and shall be responsible for the transmittal of all team reports made pursuant to this chapter. The chairperson shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02, 50-25.1-04, and 50-25.1-05.1. Under procedures adopted by the team, it may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate. All reports or recommendations issued shall be subject to the provisions of section 50-25.1-11, except that the team shall make available information reflecting the disposition of reports of institutional child abuse or neglect, where the identity of persons reporting, and of the children and parents of children involved, is protected.

SECTION 6. AMENDMENT. Section 50-25.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. Investigation. The director of the division shall forthwith investigate, or cause to be investigated, ~~any initial~~ report of child abuse or neglect made directly to ~~him~~ the director, including the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.

SECTION 7. AMENDMENT. Subsection 2 of section 50-25.1-05.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In all other cases, upon a determination that probable cause exists to believe that child abuse or neglect is indicated, the director of the division or ~~his~~ a designee of the director shall promptly make written report to the juvenile court having jurisdiction in the matter.

SECTION 8. AMENDMENT. Section 50-25.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-09. Immunity from liability. Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation, furnishing information to an investigator, or in providing protective services under this chapter, is immune from any liability, civil or criminal, that otherwise might result from reporting the alleged case of abuse or neglect. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse or neglect shall be presumed.

SECTION 9. A new subsection to section 50-25.1-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.

SECTION 10. AMENDMENT. Section 50-25.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-13. Penalty for failure to report. Any person required by this chapter to report a case of known or suspected child neglect or abuse who willfully, as defined in section 12.1-02-02, fails to do so is guilty of a class B misdemeanor.

Approved March 29, 1985

CHAPTER 537

SENATE BILL NO. 2470
(Matchie)

ABUSED CHILDREN

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to the disposition of reports of child abuse which implicate a person who is not responsible for the child's health or welfare; and to amend and reenact subsection 2 of section 50-25.1-02 of the North Dakota Century Code, relating to the definition of abused child for purposes of child abuse reports and protection.

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

SECTION 1. A new section to chapter 50-25.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Disposition of reports implicating a person not responsible for the child's health or welfare. Upon determination by the division or its designee that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the division may refer the report to an appropriate law enforcement agency for investigation and disposition.

SECTION 2. AMENDMENT. Subsection 2 of section 50-25.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's health or welfare, or who is suffering from or was subjected to any act involving that individual in violation of sections 12.1-20-01 through 12.1-20-08.

Approved April 4, 1985

CHAPTER 538

HOUSE BILL NO. 1546
(D. Olsen, Hill, Hoffner, Haugland, Nalewaja)

HUMAN SERVICES CASELOAD AND REIMBURSEMENT

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to department of human services caseload standards and reimbursement to counties.

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

SECTION 1. A new section to chapter 50-25.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Caseload standards - Reimbursement. The department of human services shall adopt caseload standards establishing minimum staff to client ratios for the investigation of reports of child abuse or neglect and the provision of protective services. Within the limits of legislative appropriation therefor, the department of human services shall reimburse each county, upon claim being made by the county, for seventy-five percent of additional staff costs caused by the imposition of such caseload standards. Upon a determination that legislative appropriations are insufficient to reimburse each claiming county in the amount of seventy-five percent of such additional staff costs, the department of human services shall reimburse each claiming county for that percentage of additional staff costs which the appropriation is sufficient to defray.

Approved March 27, 1985

CHAPTER 539

SENATE BILL NO. 2371
(Senators Stromme, Holmberg)
(Representatives Martinson, Hedstrom)

CHILDREN'S TRUST FUND

AN ACT to establish a children's trust fund as a special fund in the state treasury for the purpose of funding activities that aid in the prevention of child abuse and neglect; to amend and reenact sections 23-02.1-29 and 50-26-01 of the North Dakota Century Code, relating to an additional fee for the issuance of a certified copy of a birth certificate and the composition of the executive committee on children and youth of the governor's council on human resources; and to provide an appropriation.

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

SECTION 1. 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 shall be deposited in the children's trust fund.

SECTION 2. Expenditures from fund - Definition of child abuse prevention. Expenditures from the children's trust fund may only be for the purposes of administering and maintaining the fund, aiding in the prevention of child abuse and neglect as defined in chapter 50-25.1, and developing child abuse prevention programs. For purposes of sections 1 through 3 of this Act, "prevention of child abuse and neglect" means those activities which seek to:

1. Anticipate the occurrence of and act to prevent child abuse and neglect.

2. Provide public information and education as to the means by which child abuse and neglect may be identified, prevented, remedied, or alleviated.

SECTION 3. Authority of the executive committee on children and youth. In addition to the powers and duties enumerated in section 50-26-02, the executive committee on children and youth of the governor's council on human resources is authorized to:

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. Hire or arrange for appropriate staff, as deemed necessary, to administer and maintain properly the children's trust fund.
5. 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. Award grants from the children's trust fund in accordance with sections 1 through 3 of this Act and any rules that have been adopted.
7. Adopt, after public notice and an opportunity for comment has been given, any rules it determines to be necessary to carry out sections 1 through 3 of this Act.
8. Contract with persons or organizations, including political subdivisions and school districts.
9. Prepare and submit to the executive director of the department of human services a report at the end of each biennium.

The executive 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 executive committee of the children and youth committee to assist in the administration of the children's trust fund.

SECTION 4. AMENDMENT. Section 23-02.1-29 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-02.1-29. Fees.

1. The state department of health shall prescribe the fees, if any, not to exceed five dollars, to be paid for the following:
 - a. Each certified copy of a certificate or record.
 - b. Each certified statement of the facts of birth other than a copy of the original birth certificate.
 - c. Each filing of a new certificate of birth or fetal death following adoption, legitimation, or determination of paternity.
 - d. Each filing of a delayed certificate of birth or death except as provided for in subsection 3 of section 23-02.1-18.
 - e. Each filing of an amendment to a birth or death certificate.
 - f. A search of the files or records when no copy is made.

The fee for each additional copy of the same document, requested at the same time, may not exceed two dollars.

2. Fees Except as otherwise provided in subsection 3, fees collected under this section by the state registrar shall be deposited in the general fund of this state, according to procedures established by the state treasurer. When a local registrar of any county in the state shall have been duly authorized, by the state registrar, to prepare and issue certified copies of death certificates or fetal death certificates, said local registrar shall be entitled to charge a fee, not to exceed five dollars, for the first certified copy, and not to exceed two dollars for each additional certified copy of the same document requested at the same time. Fees collected under this section by local registrars shall be deposited to the general fund of the respective counties.
3. The state department of health shall charge a fee, in addition to those fees authorized by subsection 1, in the amount of two dollars for the issuance of each certified copy of a birth certificate. This additional fee shall be paid to the state registrar prior to the issuance of each certified copy of a birth certificate. The state registrar shall quarterly pay the additional fees

collected pursuant to this subsection into the children's trust fund created by section 1 of this Act.

SECTION 5. AMENDMENT. Section 50-26-01 of the North Dakota Century Code is hereby amended and reenacted to read 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 department of human services, which shall consist of a committee on aging, a committee on children and youth, a committee on employment of the handicapped, and other committees having a related interest in human resources as may be appointed. Each of these committees shall consist of an executive committee of no more than nine members, each of whom, except as provided by this section, shall 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 shall 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 executive committee on children and youth must have expertise in the prevention of child abuse and neglect. Each of the executive committees of the governor's council on human resources may appoint to their committee the chairman of the mayor's committee or his designated representative. A vacancy occurring other than by reason of the expiration of a term shall be filled in the same manner as original appointments, except that such appointment shall be made for the remainder of the unexpired term only.

SECTION 6. 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 executive committee on children and youth of the governor's council on human resources for the purpose of funding activities in aid of the prevention of child abuse and neglect for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 7. APPROPRIATION. There is hereby appropriated all funds which may become available through grants, gifts, or other sources to the executive committee on children and youth of the governor's council on human resources for the purpose of funding activities in aid of the prevention of child abuse and neglect. Federal funds appropriated pursuant to this subsection may be spent only after approval of the emergency commission pursuant to North Dakota Century Code section 54-16-04.1.

SECTION 8. APPROPRIATION. There is hereby appropriated out of the children's trust fund the sum of \$100,000, or so much thereof as may be available or necessary, to the executive committee on children and youth of the governor's council on human resources for the purpose of aiding in the prevention of child abuse and neglect. This appropriation is not subject to section 54-44.1-11.

Approved April 16, 1985

SALES AND EXCHANGES

CHAPTER 540

SENATE BILL NO. 2389
(Parker, Todd)

TRANSIENT MERCHANTS' LICENSE FEES

AN ACT to create and enact a new section to chapter 51-04 of the North Dakota Century Code, relating to exceptions to the requirement of a transient merchant's license; and to amend and reenact section 51-04-03 of the North Dakota Century Code, relating to the licensing fee for transient merchants.

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

SECTION 1. A new section to chapter 51-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exceptions to requirement of a transient merchant's license. A transient merchant selling merchandise only in flea markets, craft fairs, fairs, carnivals, circuses, or similar activities regulated by city or county governments, fair associations, convention bureaus, other political subdivisions, or local trade organizations, is exempt from the requirements of sections 51-04-02 and 51-04-03.

SECTION 2. AMENDMENT. Section 51-04-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-03. License fee - Bond or cash surety - License issuance. An applicant for a transient merchant's license shall pay to the attorney general a license fee of ~~twenty-five~~ five hundred dollars and shall give a surety bond, or the deposit of cash in lieu thereof, which shall be not less than one thousand dollars nor more than fifty thousand dollars, the surety on which shall be a surety company authorized to transact business in the state of North Dakota. The contents and surety therein shall be subject to the approval of the attorney general, and be conditioned that the applicant will in all things conform to the laws relating to transient merchants and further conditioned upon full compliance with all material oral or written statements and representations made by the applicant, his agents, representatives, or auctioneers with reference to merchandise sold or offered for sale, and on faithful performance under all warranties made with reference thereto. The bond shall not be revocable nor terminate prior to

passage of two years' time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be canceled has been given to the attorney general.

No license shall be valid for more than one person unless he shall be a bona fide member of a copartnership. Licenses issued by the attorney general shall be valid in all counties of the state and shall expire after one year from the dates of their issuance.

No sale under the purview of this chapter shall be conducted in the name of any person other than the bona fide owner of the goods, wares, and merchandise.

The files and records of the attorney general pertaining to transient merchants shall be kept in convenient form and open for public inspection.

Approved March 29, 1985

CHAPTER 541

HOUSE BILL NO. 1107
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

TRUST ACCOUNTS OF LENDING INSTITUTIONS

AN ACT to amend and reenact section 51-05.1-05 of the North Dakota Century Code, relating to lending institutions maintaining trust accounts.

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

SECTION 1. AMENDMENT. Section 51-05.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-05. Handling of funds by clerk of auction sale. Every clerk of an auction sale shall, at all times, maintain in his name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which he shall immediately deposit all funds not his own, including funds in which he may have some future interest or claim. A federally insured depository located outside the state but licensed as a clerk in this state is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated as such in the licensee's depository. No clerk shall commingle his personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one hundred dollars in such account from his personal funds, which sum shall be specifically identified and deposited to cover service charges related to the trust account. In conjunction with such account, he shall maintain at his usual place of business, books, records, and other documents so that the adequacy of such account may be determined at any time. Trust accounts and other records shall be open to inspection by the public service commission and its duly authorized agents at all times during regular business hours at the clerks usual place of business.

Approved March 14, 1985

CHAPTER 542

HOUSE BILL NO. 1420
(Representatives Whalen, Larson)
(Senators Parker, Reiten)

ITEM PRICING IN FOODSTORES

AN ACT to amend and reenact section 51-07-15 of the North Dakota Century Code, relating to item pricing of certain retail goods.

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

SECTION 1. AMENDMENT. Section 51-07-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-15. Use of electronic or magnetic scanners in retail foodstores - Item pricing required - Exceptions - Penalty. Except as otherwise provided in this section, every retail ~~store~~ foodstore which uses electronic or magnetic scanners to read prices must clearly post the selling price of each item in Arabic numerals, by stamp, tag, label, or other conspicuous marking device. If a product is packaged for sale in quantities of more than one, the total price must be posted. The posting must be by a label securely affixed on each item or by a label posted on the shelf edge immediately below or above the item. Compliance with this section is not required for items not marked in accordance with a uniform products code or any similar marking system designed to be scanned by electronic or magnetic checkout equipment. Any person who violates this section is guilty of an infraction.

Approved March 27, 1985

SOCIAL SECURITY

CHAPTER 543

SENATE BILL NO. 2197
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION DEFINITIONS, RATES, AND LIABILITY

AN ACT to amend and reenact subsections 14 and 17 of section 52-01-01, subsection 1 of section 52-03-07, subsections 1 and 2 of section 52-04-06, sections 52-04-08, 52-04-09, 52-04-22, 52-06-16, and 52-06-32 of the North Dakota Century Code, relating to unemployment compensation definitions, administrative use of Reed Act moneys, and contribution rates, transfer experience rates, classification of employers to determine contributions, federal advance interest repayment fund, and representation of employers.

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

SECTION 1. AMENDMENT. Subsections 14 and 17 of section 52-01-01 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

14. "Employee" means every individual, whether male, female, citizen, alien, or minor, who ~~is performing, or subsequent to January 1, 1936, has performed, performs~~ services for an employer in an employment subject to the North Dakota Unemployment Compensation Law and includes an officer of a corporation, ~~but such term does not include-~~
 - a- ~~Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or~~
 - b- ~~Any individual (except an officer of a corporation) who is not an employee under such common-law rules.~~
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 usual common-law rules applicable in determining the employer-employee relationship, 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 resale or supplies for use in their business operations.

For purposes of this paragraph, the term "employment" shall include 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, shall 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 shall be deemed to be employment subject to the North Dakota Unemployment Compensation Law unless and until it is shown that such individual, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or such individual (except an officer of a corporation) is not an employee under such common-law rules provided that this subdivision shall not operate to exclude services as defined in paragraph 3 of subdivision a: (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, and (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.
- 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" shall include 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 shall be treated as the employer of such individual; and
 - (b) Such other person shall 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" shall include 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. Subsection 1 of section 52-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-03-07. Administrative use.

1. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act [42 U.S.C. 1103], as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by the legislative assembly; provided, that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:
- a. Specifies the purposes for which money is appropriated and the amounts appropriated therefor;
 - b. Limits the period within which such money may be expended to a period ending not more than two years after the date of the enactment of the appropriation law; and
 - c. Limits the amount which may be used during a twelve-month period beginning on July first and ending on the next June thirtieth to an amount which does not exceed the amount by which:
 - (1) The aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act [42 U.S.C. 1103], as amended, during the same twelve-month period and the ~~twenty-four~~ thirty-four preceding twelve-month periods, exceeds
 - (2) The aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such ~~twenty-five~~ thirty-five 12-month periods. For the purposes of this section, amounts used

during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount used for administration during such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the twenty-fourth thirty-fourth preceding such period.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 52-04-06 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The percent of the average annual payroll by which the cumulative contributions paid by an employer on or before October thirty-first of any year, with respect to wages paid by that employer prior to the first day of October of that calendar year, exceeds the cumulative benefits which were charged to that employer's account and paid on or before September thirtieth of that year, is that employer's reserve ratio. The contribution rate for the next calendar year of an employer eligible under section 52-04-05 will be the basic rate of contributions on the line in the schedule of basic rates opposite that employer's reserve ratio as established for that year.

EMPLOYER'S RESERVE RATIO	BASIC RATE
Minus balance or standard rate	5.0%
0% but less than 1%	4.3%
0% or less	5.0%
More than 0% but less than 1%	4.3%
1% but less than 2%	4.1%
2% but less than 3%	3.9%
3% but less than 4%	3.7%
4% but less than 5%	3.5%
5% but less than 6%	3.3%
6% but less than 7%	3.1%
7% but less than 8%	2.9%
8% but less than 9%	2.7%
9% but less than 10%	2.5%
10% but less than 11%	2.3%
11% but less than 12%	2.1%
12% but less than 13%	1.9%
13% but less than 14%	1.7%
14% but less than 15%	1.5%
15% but less than 16%	1.3%
16% but less than 17%	1.1%
17% but less than 18%	0.9%
18% but less than 19%	0.7%
19% and over	0.5%

2. For the calendar year 1983 and each year thereafter, the bureau shall adjust the basic rates in the schedule of basic rates by an adjustment ratio so as to provide a

return of contributions needed to pay the projected amount of benefits payable for the following year and to provide for an adequate trust fund reserve. An adequate trust fund reserve as of October 1, 1983, will be considered to be forty percent of the average annual amount of benefits paid. As of October 1, 1984, and each October first thereafter, an adequate reserve will be considered to be fifty percent of the average annual amount of benefits paid. The average annual amount of benefits paid must be computed by dividing the total amount of benefits paid, or projected to be paid, during the previous thirty-six months by three. An adequate trust fund reserve as of October 1, 1986, must be at least fifteen percent of the average annual amount of benefits paid. An adequate trust fund reserve as of October 1, 1987, and each October first thereafter, must be at least twenty-five percent of the average annual amount of benefits paid. The eventual goal for the amount of the trust fund reserve is fifty percent of the average annual amount of benefits paid. The average annual amount of benefits paid shall be computed by dividing the total amount of benefits paid and projected to be paid during the previous thirty-six months by three. Benefits financed by direct reimbursement must be omitted from this computation. After the bureau has determined the necessary adjustment ratio, each basic rate in the schedule of basic rates will be reduced or increased by that adjustment ratio with the result rounded to the nearest lower one-tenth of one percent in the case of a reduction or to the nearest higher one-tenth of one percent in the case of an increase.

SECTION 4. AMENDMENT. Section 52-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-08. Succession to predecessor's rights, accounts, contributions, benefit experience, and ratings. For the purpose of establishing benefit experience and fixing contributions to be paid, an employing unit which in any manner succeeds to or acquired substantially all of the organization, trade, business, or the assets thereof, of any employing unit shall upon request be substituted to the position and all rights of the predecessor employing unit with respect to such predecessor employing unit's separate account, actual contributions and benefit experience, annual payroll, or otherwise, as if no change with respect to such separate account, contributions, and benefit experience, payrolls or otherwise, had occurred. The bureau upon notification thereof shall forthwith transfer to such succeeding employing unit all rights, accounts, contributions, benefit experience, and all ratings of such predecessor employing unit in accordance with such regulations as the bureau may prescribe; provided, that if good cause can be shown to the bureau why such transfer would be inequitable, the bureau may refuse the same the predecessor files a written protest against such transfer within fifteen days of being notified of the successor's application, the transfer will not be made.

SECTION 5. AMENDMENT. Section 52-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-09. Classification of employers to determine contributions - Regulations governing. For the year 1942 and for each calendar year thereafter, the bureau shall classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such benefit experience. Each employer's rate for any calendar year shall be determined on the basis of his record as of January first of that calendar year except after the year 1981, when each employer's rate for the next calendar year shall be determined on the basis of his record as of October first of the preceding year. If as of the date such classification of employers is made, the bureau finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the bureau finds incorrect or insufficient, the bureau shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the bureau at the time, and shall notify the employing unit thereof by registered or certified mail addressed to its last known address. Unless such employing unit shall file the report, or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of such notice, his rate may not be less than the standard rate for the ensuing calendar year. An employer's rate for a calendar year shall be determined on the basis of the employer's experience with contribution payments and benefit charges as of October first of the preceding year. If when such determination is to be made an employer has failed to file a required report or filed an insufficient report, the bureau shall notify the employer thereof by certified mail addressed to the employer's last known address. Unless the employer files the report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for the following calendar year may not be less than the standard rate. If, at any time, an employer has failed to file a required report or filed an insufficient report, the bureau may, at any time, estimate the wage information required by the report on the basis of reasonably available evidence. The bureau shall notify the employer of the estimate by certified mail addressed to the employer's last known address. Unless the employer files the report or a sufficient report within fifteen days after the mailing of the notice, the estimate shall become final for all purposes, except that if the amount of estimated wages is less than the actual wages, the bureau may reconsider the estimate.

SECTION 6. AMENDMENT. Section 52-04-22 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-22. Federal advance interest repayment fund. There is created the federal advance interest repayment fund, to which will be credited all assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund shall consist of all interest collected on delinquent

contributions and all penalties provided by the Unemployment Compensation Law. All moneys accruing to this fund in any manner shall be maintained in this separate account.

After all known interest charges have been paid, any remaining moneys in the fund may be transferred to the unemployment compensation fund.

Moneys in this fund may be used for the purpose of paying interest due on other than federal advances. However, moneys in this fund shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau. Any remaining moneys in the fund not used for the purposes specified above may be transferred to the unemployment compensation fund.

SECTION 7. AMENDMENT. Section 52-06-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-16. When redeterminations made by division - Notice. The job insurance division may reconsider a determination of a claim whenever it finds:

1. That an error in computation or identity has occurred in connection therewith;
2. That wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or
3. That benefits have been allowed or denied or the amount of benefits fixed on the basis of a misrepresentation of facts.

No such redetermination shall be made after ~~one year~~ two years from the day of the original determination, except that a reconsidered determination involving a finding that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentations of fact may be made within ~~two~~ three years from the date of the determination. Notice of any such redetermination shall be given promptly to the parties entitled to the notice or original determination, and in the manner prescribed in section 52-06-12.

SECTION 8. AMENDMENT. Section 52-06-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-32. Individual claiming benefits not to be charged fees by bureau - Fees of individual's attorney. No ~~individual claiming benefits~~ claimant shall be charged fees of any kind in any proceeding under this chapter by the bureau, its representatives, or by any court or any

officer thereof. Any individual claiming benefits in any proceeding before the bureau or its representatives or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the bureau. Any employer or claimant may be represented by counsel or other duly authorized agent in any proceeding before the bureau or its representatives. A claimant's attorney fees, for representation in district court, shall be paid by the bureau, in an amount approved by the bureau, only if the claimant finally prevails. The bureau shall not pay attorney fees for representation in any proceeding before the bureau or its representatives.

Approved April 4, 1985

CHAPTER 544

SENATE BILL NO. 2253
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFIT DISCLOSURES AND CONTRIBUTIONS

AN ACT to amend and reenact subsection 31 of section 52-01-01, sections 52-01-03, 52-04-05, and subsections 12 and 13 of section 52-06-02 of the North Dakota Century Code, relating to definitions, disclosures, contributions, and disqualification for purposes of unemployment compensation; to provide an effective date; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 31 of section 52-01-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

31. "Wages" means all remuneration for service from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his service from persons other than his employing unit shall be treated as wages received from his employing unit. After January 1, 1951, backpay awarded under any statute of this state or of the United States shall be treated as wages. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules as prescribed by the bureau. For the purpose of a determination of insured status only, backpay awards after January 1, 1951, shall be allocated to the quarters with respect to which they were paid. If the remuneration of an individual is not based upon a fixed period or duration of time or if his wages are paid at irregular intervals or in such manner as not to extend regularly over a period of employment, for the purposes of a determination of insured status only, the wages shall be allocated to weeks or quarters in accordance with regulations prescribed by the bureau. Such regulations shall, so far as possible, produce results reasonably similar to those which would prevail if

the individual were paid his wages at regular intervals. The term "wages" shall not include:

- a. The amount of any payment made after January 1, 1951, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it or for such individuals generally and their dependents or for a class or classes of such individuals, or for a class or classes of such individuals and their dependents, on account of:
 - (1) Retirement;
 - (2) Sickness or accident disability, but, in the case of payments made to an employee or any of his dependents, this paragraph shall exclude from the term "wages" only payments which are received under a workman's compensation law, or
 - (3) (2) Medical and hospitalization expenses in connection with sickness or accident disability, or
 - (4) (3) Death.
- b. The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made after January 1, 1951, by an employing unit to, or on behalf of an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit.
- c. The amount of any payment made after January 1, 1951, by an employing unit to, or on behalf of, an individual performing services for it or his beneficiary (1) from or to a trust described in section 401(a) of the federal Internal Revenue Code which is exempt from tax under section 401 501(a) of the federal Internal Revenue Code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payments, meets the requirements of section 401 is a plan described in section 403(a) of the federal Internal Revenue Code.

- d. The amount of any payment made by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under section 3101 of the federal Internal Revenue Code with respect to services performed after January 1, 1951.
- e. Remuneration paid after January 1, 1951, in any medium other than cash to an individual for services not in the course of the employing unit's trade or business.
- f. The amount of any payment, other than vacation or sick pay, made after January 1, 1951, to an individual after the month in which he attains the age of sixty-five, if he did not perform services for the employing unit in the period for which such payment is made.
- g- Dismissal payments before December 31, 1951, which the employing unit legally is not required to make.
- g. Any payment made to, or on behalf of, an employee or his beneficiary under or to an annuity contract described in section 403(b) of the federal Internal Revenue Code, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise, under or to an exempt governmental deferred compensation plan as defined in section 3121 (v)(3) of the federal Internal Revenue Code, or to supplemental pension benefits under a plan or trust described in any of the foregoing provisions to take into account some portion or all of the increase in the cost of living as determined by the secretary of labor since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974.
- h. Any payment made to, on behalf of, an employee or his beneficiary under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of the federal Internal Revenue Code for such payment.
- i. The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the federal Internal Revenue Code.
- j. Nothing in this subsection shall exclude from the term "wages" any employer contribution under a qualified

cash or deferred arrangement as defined in section 401(k) of the federal Internal Revenue Code to the extent not included in gross income by reason of section 402(a)(8) of the federal Internal Revenue Code, or any amount treated as an amount treated as an employer contribution under section 414(h)(2) of the federal Internal Revenue Code.

- k. Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this subdivision and the income attributable thereto shall not thereafter be treated as wages for purposes of this chapter. For purposes of this subdivision, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subdivisions c, g, and h.

SECTION 2. AMENDMENT. Section 52-01-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 shall be held confidential and shall 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 shall 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 workmen's compensation bureau, the state labor commissioner 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 workmen's compensation bureau, the state labor commissioner and the state tax commissioner.

SECTION 3. AMENDMENT. Section 52-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-05. Standard rate of contributions - Reduction of rates.

1. For the calendar year 1979 and each calendar year thereafter, the standard rate of contributions payable by each employer shall be the rate fixed for employers who have a minus balance reserve ratio which is applicable for the given year in the schedule of rates under section 52-04-06 or five and four-tenths percent, whichever is greater. No employer's rate shall be reduced below the standard rate for any calendar year unless and until his account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year, except that an employer who has not been subject to the law for a period of time sufficient to meet this requirement may qualify for a reduced rate if his account has been chargeable with benefits throughout a lesser period of time but in no event less than the twelve-consecutive-calendar-month period, the twenty-four-consecutive-calendar-month period for 1985 and each year thereafter, ending on September thirtieth of the preceding calendar year. Employers who have not been subject to the law for a sufficient period of time to meet the requirements of this subsection shall have their rate determined under subsection 2.
2. For the calendar year 1981 and each year thereafter, an employer who is not eligible for an experience rate computation, as provided in subsection 1 and section 52-04-06, shall pay contribution at a rate equal to the average industry tax rate as determined by the bureau on computation date, provided that the rate shall not be less than one percent. This subsection shall not apply to

newly liable employers in industries with an average tax rate exceeding three percent. Newly liable employers in these industries shall pay the standard rate. The computation of the average industry rate shall exclude those employer accounts which are not eligible for the computation of an experience rate solely by reason of insufficient experience. For the calendar year 1985 and each year thereafter, an employer who is not eligible for an experience rate as provided in subsection 1 and section 52-04-06, shall be assigned the average tax rate of all employers as determined by the bureau on the computation date, but in no event shall this rate be less than one percent. This provision shall not apply to employers classified in an industry which the bureau determines had a negative reserve on the computation date. Newly liable employers in these industries shall be assigned the standard rate. An employer with an industry classification code that is without experience in this state for twelve consecutive chargeable months or who has failed to provide correct industrial classification information shall pay at the standard rate. Assignment by the bureau of employer's industrial classification, for the purpose of this subsection, shall 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. The standard rate shall be assigned an employer account which on computation date has a minus balance reserve, or has failed to file a contribution report or a corrected or sufficient report as provided in section 52-04-09.

SECTION 4. AMENDMENT. Subsections 12 and 13 of section 52-06-02 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

12. Which are based on service performed ~~after December 31, 1977,~~ in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services or in an educational institution while in the employ of an educational service agency, for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, or during an established and customary vacation period or holiday recess, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms

or if the individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess. For the purposes of this subsection and subsection 13, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law.

13. Which are based on services performed after December 31, 1977, in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual or in an educational institution while in the employ of an educational service agency, for any week which commences during a period between two successive academic years or terms, or during an established and customary vacation period or holiday recess, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or if the individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law. If compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 1985.

SECTION 6. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 4, 1985

CHAPTER 545

SENATE BILL NO. 2160
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFIT REDUCTION FOR
PENSIONS

AN ACT to amend and reenact subsection 16 of section 52-06-02 of the North Dakota Century Code, relating to reduction of unemployment compensation benefits due to receipt of pensions.

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

SECTION 1. AMENDMENT. Subsection 16 of section 52-06-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16. For any week with respect to which an individual is receiving a pension (which shall include a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment) under a plan maintained or contributed to by a base-period or chargeable employer (as determined under applicable law), unless the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero):
 - a. By the prorated weekly amount of the pension after deduction of ~~one-half~~ three-fourths of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed on or after July 1, 1985, and by the prorated weekly amount of the pension after deduction of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed on or after July 1, 1986;
 - b. By the entire prorated weekly amount of the pension if subdivision a or subdivision c does not apply; or
 - c. By ~~one-half~~ one-fourth of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any other person or organization) who is not a

base-period or chargeable employer (as determined under applicable law) for claims filed on or after July 1, 1985, and by no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any other person or organization) who is not a base-period or chargeable employer (as determined under applicable law) for claims filed on or after July 1, 1986.

- d. No reduction may be made under this subsection by reason of the receipt of a pension if the services performed by the individual during the base period (or remuneration received for such services) for the employer did not affect the individual's eligibility for, or increase the amount of, the pension, retirement, or retired pay, annuity, or similar payment. This limitation does not apply to pensions paid under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law). Payments made under those Acts must be treated solely in the manner specified by subdivisions a, b, and c.

Approved April 4, 1985

CHAPTER 546

SENATE BILL NO. 2306
(Wenstrom)

OASIS PRIMARY 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 North Dakota old-age and survivor insurance system.

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

SECTION 1. AMENDMENT. Subsection 9 of section 52-09-20 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Primary insurance benefit" means an amount equal to the sum of the following:
- a. (1) Fifty per centum of the amount of an individual's average monthly wage if ~~such~~ the average monthly wage does not exceed seventy-five dollars, or
 - (2) If ~~such~~ the average monthly wage exceeds seventy-five dollars, fifty per centum of seventy-five dollars, plus fifteen per centum of the amount by which ~~such~~ the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars; and
 - b. An amount equal to one per centum 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 ~~such~~ the individual.

Effective July 1, 1983 1985, the term "primary insurance benefit" shall be the total of the sums determined in subdivisions a and b plus one hundred ~~fifty~~ eighty dollars. Where the primary insurance benefit thus computed is less than one hundred ~~fifty~~ eighty dollars, ~~such~~ the benefit shall be one hundred ~~fifty~~ eighty dollars. Effective July 1, ~~1984~~ 1986, the term "primary insurance benefit" shall be the total of the sums

determined in subdivisions a and b plus ~~one~~ one ~~two~~ two hundred ~~sixty~~ sixty dollars. Where the primary insurance benefit thus computed is less than ~~one~~ one ~~two~~ two hundred ~~sixty~~ sixty dollars, ~~such~~ the benefit shall be ~~one~~ one ~~two~~ two hundred ~~sixty~~ sixty dollars. The provisions ~~herein shall~~ apply to valid claims filed before and after the specified date.

Approved April 11, 1985

SPORTS AND AMUSEMENTS

CHAPTER 547

HOUSE BILL NO. 1448
(Larson)

PUBLIC DANCE DEFINED

AN ACT to amend and reenact subsections 4 and 5 of section 53-02-01 of the North Dakota Century Code, relating to the definition of public dance and public dancing place.

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

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 53-02-01 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. "Public dance" means any dance where the public may participate and ~~where the public~~ is present primarily for the sole purpose of dancing and where the location of the dance has a ~~seating~~ capacity of at least ~~five~~ one hundred people.
5. "Public dancing place" means a room, place, or space, which has a ~~seating~~ capacity of at least ~~five~~ one hundred people, open to public patronage where dancing in which the public may participate is carried on and where the public is present primarily for the sole purpose of dancing.

Approved March 29, 1985

CHAPTER 548

HOUSE BILL NO. 1475
(Representatives C. Williams, Halmrast)
(Senator Wogsland)

AMUSEMENT DEVICE LICENSES

AN ACT to amend and reenact section 53-04-02 of the North Dakota Century Code, relating to licenses for amusement games and devices.

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

SECTION 1. AMENDMENT. Section 53-04-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 ~~therefor~~.

Licenses shall be of two types. An operator's license shall entitle the licensee to operate, lease, or distribute machines at locations not owned or managed by the licensee. The operator must affix to each machine an operator's number provided by the attorney general. The operator must have a business office within the state and a valid sales tax permit. A location license shall 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 ~~four~~ 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 shall 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 ~~one hundred fifty~~ twenty-five dollars per machine.

Approved March 27, 1985

CHAPTER 549

SENATE BILL NO. 2245
(Senator Todd)
(Representative Unhjem)

CHAMBER OF COMMERCE USE OF GAMING PROCEEDS

AN ACT to create and enact a new subdivision to subsection 6 of section 53-06.1-01 of the North Dakota Century Code, relating to uses by chambers of commerce of net proceeds from charitable gambling.

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

SECTION 1. A new subdivision to subsection 6 of section 53-06.1-01 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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.

Approved April 15, 1985

CHAPTER 550

SENATE BILL NO. 2059
(Legislative Council)
(Interim Charitable Gambling Committee)

GAMES OF CHANCE LICENSES FROM CITY OR COUNTY

AN ACT to amend and reenact subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to licensing of certain games of chance by cities and counties.

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

SECTION 1. AMENDMENT. Subsection 1 of section 53-06.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Eligible Except as otherwise provided in this subsection, eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a fifty dollar license fee. ~~However, an~~ An eligible organization ~~desiring~~ may apply for local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed two thousand dollars, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool. To obtain local authorization, the eligible 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 ~~within~~ in a county but outside the limits of a city, it shall apply to the board of county commissioners for a license. Applications for the conduct of raffles and bingo games of chance subject to authorization by a city or county ~~shall~~ must be made on forms provided by the attorney general and ~~shall~~ must be accompanied by a ten dollar permit fee payable to the city or county governing body.

Approved March 29, 1985

CHAPTER 551

SENATE BILL NO. 2489
(Senator Maixner)
(Representative Whalen)

GAMES OF CHANCE LICENSES

AN ACT to amend and reenact subsection 2 of section 53-06.1-03 and subdivision b of subsection 3 of section 53-06.1-03 of the North Dakota Century Code, relating to licensing of organizations conducting games of chance; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subsection 2 of section 53-06.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The attorney general shall license such organizations which 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.
 - 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.
 - 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.

SECTION 2. AMENDMENT. Subdivision b of subsection 3 of section 53-06.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. **Class B License License** applicants must 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, which the organization may deduct from its tax liability under section 53-06.1-12 for the year in which the permit fee is paid.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1986.

Approved April 11, 1985

CHAPTER 552

HOUSE BILL NO. 1468
(Representative Cleveland)
(Senator Holmberg)

GAMES OF CHANCE RENT LIMITATIONS

AN ACT to amend and reenact subdivision c of subsection 3 of section 53-06.1-03 of the North Dakota Century Code, relating to rent payment limitations for the privilege of conducting games of chance.

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

SECTION 1. AMENDMENT. Subdivision c of subsection 3 of section 53-06.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Rented premises are subject to rules adopted by the attorney general. At sites where the game of twenty-one is conducted, the maximum monthly rent shall not exceed one hundred fifty dollars multiplied by the number of tables ~~upon~~ on which the game of twenty-one is played for any purposes associated with the ~~right to conduct~~ privilege of conducting all games of chance at that site.

Approved March 27, 1985

CHAPTER 553

SENATE BILL NO. 2058
(Legislative Council)
(Interim Charitable Gambling Committee)

SPORTS POOL LIMITS

AN ACT to amend and reenact section 53-06.1-09 of the North Dakota Century Code, relating to the operation of sports pools.

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

SECTION 1. AMENDMENT. Section 53-06.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-09. Sports pools - Control by licensee - Rules posted -
Limitation on prizes. ~~Any licensee or other~~ An eligible
organization may allow the playing of sports pools on the premises
or authorized site. Sports pools ~~shall be~~ are allowed for
professional sports only. If sports pools are allowed, they ~~shall~~
must be conducted and controlled by the ~~licensee or other~~ eligible
organization. ~~Any~~ The eligible organization shall clearly post any
rules affecting the conduct of sports pools or requirements of
participants ~~shall be clearly posted.~~ The maximum wager on any
sports pool ~~shall not exceed is~~ is five dollars. The amounts paid to
sports pool participants in prizes ~~shall may~~ may not exceed ~~two-thirds~~
ninety percent of the gross proceeds.

Approved March 22, 1985

CHAPTER 554

HOUSE BILL NO. 1218
(O. Hanson, O'Shea, W. Williams)

GAMES OF CHANCE ALLOWABLE EXPENSES

AN ACT to amend and reenact subsections 3 and 4 of section 53-06.1-11 of the North Dakota Century Code, relating to allowable expenses of charitable organizations conducting games of chance.

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

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 53-06.1-11 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. No item of expense incurred in connection with holding, operating, or conducting any game of chance pursuant to this chapter may be deducted from adjusted gross proceeds, except bona fide expenses of a reasonable amount actually and necessarily incurred and directly attributable only to the conduct of the games of chance. Bona fide expenses do not include overhead, capital costs, and general maintenance, except as permitted in subsection 4. Total For an organization that does not use any of the net proceeds for that organization's own purposes, total expenses for games of chance may not exceed forty-five percent of the total adjusted gross proceeds, computed on an annual basis. For other organizations, total expenses for games of chance may not exceed thirty-five percent of the total adjusted gross proceeds from each such occasion for eligible organizations conducting games of chance on more than one site, and may not exceed thirty-eight percent of total adjusted gross proceeds from each such occasion for eligible organizations conducting games of chance on only one site, computed on an annual basis. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes.
4. Expense For an organization that does not use any of the net proceeds for that organization's own purposes, expense

payments for games of chance deductible from adjusted gross proceeds may be made for any purpose. For other organizations, expense payments for games of chance deductible from adjusted gross proceeds shall ~~may~~ be made only for the following purposes:

- a. The purchase of necessary goods, wares, and merchandise.
- b. The securing of services reasonably necessary for repair of equipment, and for operating or conducting games of chance.
- c. For rent if the premises or equipment are rented, or for janitorial services if premises are not rented.
- d. For accountant's fees.
- e. For license fees.
- f. Additional overhead expenses not to exceed the sum of two hundred dollars per month.

Approved March 29, 1985

STATE GOVERNMENT

CHAPTER 555

HOUSE BILL NO. 1355
(Rydell)

CENTENNIAL USE OF GREAT SEAL

AN ACT to allow the use of the great seal of the state for items commemorating the state centennial; and to provide an expiration date.

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

SECTION 1. Exemption for use of great seal for centennial commemorative items. Any person who designs any item to commemorate the state centennial using the great seal of the state, or offers for sale, sells, or uses in a public manner the item so designed is exempt from the application of section 54-02-01. To receive the exemption provided in this Act, the person must first receive approval of the design of the item from the North Dakota centennial commission established by chapter 583 of the 1983 Session Laws and from the secretary of state.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved March 14, 1985

CHAPTER 556

HOUSE BILL NO. 1551
(Strinden)

CENTENNIAL COMMISSION MEMBERSHIP

AN ACT to amend and reenact section 2 of chapter 583 of the 1983 Session Laws of North Dakota, relating to the membership of the North Dakota centennial commission.

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

SECTION 1. AMENDMENT. Section 2 of chapter 583 of the 1983 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 2. Establishment of a North Dakota commission. The governor shall appoint a North Dakota centennial commission consisting of eleven members, eleven of whom are to be appointed by the governor, two of whom are to be senators appointed by the president of the senate, and two of whom are to be representatives appointed by the speaker of the house of representatives.

Approved March 27, 1985

CHAPTER 557

SENATE BILL NO. 2190
(Committee on State and Federal Government)
(At the request of the Industrial Commission)

STATE-OWNED LAND SALE

AN ACT to amend and reenact section 54-01-05.2 of the North Dakota Century Code, relating to the sale of state owned land by the industrial commission, acting as the state housing finance agency; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 54-01-05.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 shall 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 shall 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 shall 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, and that the state reserves the right to reject any and all bids.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 558

HOUSE BILL NO. 1243
(Committee on State and Federal Government)
(At the request of the Legislative Compensation Commission)

LEGISLATIVE COMPENSATION AND EXPENSES

AN ACT to amend and reenact sections 54-03-10, 54-03-20, and 54-35-10 of the North Dakota Century Code, relating to compensation and expense reimbursement for members of the legislative assembly; to repeal section 54-03-20.1 of the North Dakota Century Code and chapter 551 of the 1983 Session Laws of North Dakota, relating to compensation and expense reimbursement for members of the legislative assembly; to provide an effective date; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 54-03-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-10. Compensation of speaker, majority and minority leaders, committee chairmen, and employees. The speaker of the house, the house majority leader, the senate majority leader, the house minority leader, and the senate minority leader shall each receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of five ten dollars per day for each calendar day during any regular, special, or organizational session. Chairmen of the substantive standing committees shall receive additional compensation of three five dollars for each calendar day during any regular, special, or organizational session. The additional compensation provided by this section shall be paid in the manner provided in section 54-03-20. The legislative assembly, by concurrent resolution, shall fix the compensation of the other officers and employees elected or appointed. The provisions of this section shall be retroactive to January 1, ~~1971~~ 1985.

SECTION 2. AMENDMENT. Section 54-03-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-20. Allowance for living and other expenses Compensation and expense reimbursement of members of the legislative assembly. Each

member of the legislative assembly of the state of North Dakota shall be is entitled to and shall receive as compensation for services the sum of eighty-five ninety dollars a for each calendar day, as and is entitled to receive reimbursement for his living expenses, including meals, lodging, uncompensated travel, and other necessary expenses, to a maximum of six hundred dollars per calendar month at the rates and in the manner provided in section 44-08-04 for each calendar or natural 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 per 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. 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 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 expense allowance amount to which each legislator is entitled shall be paid immediately following the organizational session in December and at the end of 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 shall be included as a calendar or natural day during a legislative session for the purpose of calculation of the expense allowance provided by purposes of this section.

In addition, each such member shall receive during the term for which he the member was elected, for uncompensated expenses incurred in as compensation for the execution of his public duties during the biennium, the sum of one hundred eighty dollars a month, which sum shall be is payable every six months. Provided, however, should if a member die or resign dies or resigns from office during his the member's term, he the member shall be paid only the allowances provided for in this section for the period for which he the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member thereof shall be is a conclusive presumption of the expenditure of the expense allowances entitlement as set out in this section and these compensation and expense allowances shall 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)]. The provisions of this section shall be retroactive to January 1, 1981 1985.

SECTION 3. AMENDMENT. Section 54-35-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-35-10. Compensation of members and leadership.

1. The members of the council and the members of any committee of the council shall be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of sixty-two dollars and fifty cents per day and shall also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.
2. In addition to the compensation provided in subsection 1, the chairman of the council shall receive an additional five dollars for each day spent in attendance at sessions of the council and of its committees, and the chairman of each of the council's committees shall receive ~~three~~ five dollars for each day spent in attendance at sessions of the council or of the committee which ~~he~~ the person chairs.

SECTION 4. REPEAL. Section 54-03-20.1 of the North Dakota Century Code and chapter 551 of the 1983 Session Laws of North Dakota are hereby repealed.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 1985.

SECTION 6. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 559

SENATE BILL NO. 2311
(Moore, Thane, Peterson, David, Todd)

REPORT OF CONTRIBUTIONS FOR STATE EMPLOYEE BENEFITS

AN ACT to provide that information be provided to state employees concerning state contributions to employee health and retirement benefit programs.

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

SECTION 1. Information to employees on state employee health and retirement and social security benefit program contributions and premiums paid by the state. A report providing a summary of payments made by the state for premiums and contributions for state employee insurance, retirement, and federal social security benefit programs for each state employee must be provided to each employee every calendar year. The report shall be in a form adopted by those state agencies and institutions responsible for preparing state employee payrolls. The information provided must include any portion of required employee retirement program contributions paid by the state on behalf of the employee and must include the accumulated state payments for these benefit programs for the current calendar year.

Approved March 28, 1985

CHAPTER 560

SENATE BILL NO. 2475
(Senators Heigaard, Nething)
(Representatives Mertens, Strinden)

STATE OFFICIALS' SALARIES

AN ACT to amend and reenact sections 4-01-21, 15-21-02, 26.1-01-09, 34-05-01.2, 49-01-05, 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, commissioner of labor, public service commissioners, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and tax commissioner.

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

SECTION 1. AMENDMENT. Section 4-01-21 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-01-21. Salary of commissioner of agriculture. The annual salary of the commissioner of agriculture is ~~forty-three~~ forty-six thousand ~~three hundred eighty~~ dollars.

SECTION 2. AMENDMENT. Section 15-21-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-21-02. Salary and traveling expenses. The annual salary of the superintendent of public instruction is ~~forty-four~~ forty-seven thousand ~~twenty-eight~~ dollars. He shall be allowed in addition thereto his expenses incurred in the discharge of his 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 3. AMENDMENT. Section 26.1-01-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-01-09. Salary of commissioner. The annual salary of the commissioner is ~~forty-three~~ forty-six thousand ~~three hundred eighty~~ dollars.

SECTION 4. AMENDMENT. Section 34-05-01.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-05-01.2. Department of labor to be administered by commissioner of labor. The department of labor shall be administered by a commissioner of labor who shall 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 shall commence 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-three~~ forty-six thousand ~~three hundred eighty~~ dollars.

SECTION 5. AMENDMENT. Section 49-01-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is ~~forty-three~~ forty-six thousand ~~three hundred eighty~~ 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 6. AMENDMENT. Section 54-08-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-08-03. Salary of lieutenant governor. The annual salary of the lieutenant governor is ~~twelve~~ fifty thousand ~~five hundred~~ dollars.

SECTION 7. AMENDMENT. Section 54-09-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-09-05. Salary of secretary of state. The annual salary of the secretary of state is ~~forty-three~~ forty-six thousand ~~three hundred eighty~~ dollars.

SECTION 8. AMENDMENT. Section 54-10-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-10. Salary of state auditor. The annual salary of the state auditor is ~~forty-three~~ forty-six thousand ~~three hundred eighty~~ dollars.

SECTION 9. AMENDMENT. Section 54-11-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is ~~forty-three~~ forty-six thousand ~~three hundred eighty~~ dollars.

SECTION 10. AMENDMENT. Section 54-12-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-11. Salary of attorney general. The annual salary of the attorney general is ~~forty-nine~~ fifty-two thousand ~~two hundred six~~ dollars.

SECTION 11. AMENDMENT. Section 57-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is ~~forty-three~~ forty-six thousand ~~three hundred eighty~~ dollars.

Approved March 30, 1985

CHAPTER 561

SENATE BILL NO. 2158
(Committee on State and Federal Government)
(At the request of the State Auditor)

STATE AUDITOR AUDIT FREQUENCY

AN ACT to amend and reenact sections 54-10-01 and 54-10-14 of the North Dakota Century Code, to require audits performed by the state auditor to be performed at least once every two years.

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

* SECTION 1. AMENDMENT. Section 54-10-01 of the North Dakota Century Code is hereby amended and reenacted to read 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 at least once every two years of the books, records, accounting methods, and internal controls of any and all state agencies, including the occupational and 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 charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to all agencies which receive and expend moneys from other than the general fund, unless for good cause the amounts charged shall be waived by the auditor for a one-year period of time with such waiver being subject to annual renewal after proper application has been filed with the auditor. The governing board of any occupational and professional boards and commissions shall provide for an audit at least

* NOTE: Section 54-10-01 was also amended by section 1 of House Bill No. 1045, chapter 562.

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 the report is in the form and style as prescribed by the state auditor, the state auditor shall not audit such board or commission.

3. 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.
4. Perform such other duties as are or may be prescribed by law.

* SECTION 2. AMENDMENT. Section 54-10-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor, by his duly appointed deputy auditors or other authorized agents, shall audit, at least once every ~~four~~ 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. Municipalities.
2. Park districts.
3. School districts.
4. Firemen's relief associations.
5. Airport authorities.
6. Public libraries.
7. Water resource districts.
8. Garrison Diversion Conservancy District.
9. Rural fire protection districts.
10. Special education districts.
11. Vocational education centers.
12. Correction centers.
13. Recreation service districts.
14. Weed boards.

* NOTE: Section 54-10-14 was also amended by section 94 of House Bill No. 1059, chapter 235.

Audits may be conducted at more frequent intervals if the state auditor, in his discretion, deems it advisable. The state auditor may in lieu of conducting an audit every ~~four~~ two years require annual reports from school districts with less than one hundred enrolled students, municipalities with less than three hundred population based on the latest federal census, 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 shall contain such financial information as the state auditor may request. The state auditor may also make such additional examination or audit as he deems necessary in addition to such report. When a report is required in lieu of an audit, the state auditor upon receiving a petition containing the signatures of not less than ten percent of the electors of the political subdivision voting for the office of governor at the preceding general election, shall conduct an audit of such political subdivision's books, records, and financial accounts.

The governing board of any political subdivision may provide for an audit annually by a certified public accountant or licensed public accountant, and such report shall be in such form and contain such information as the state auditor may require in addition to other information, and in such case the state auditor shall not be required to make the examination heretofore provided for in this section. The number of copies as requested by the state auditor of such audit reports shall be filed with the state auditor by the certified public accountant or licensed public accountant making such audit at the time that the report of audit is delivered to said political subdivisions, and the governing board of such subdivision shall not pay the fee for such audit until evidence of such 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 such subdivisions disclosed by such audit reports, and failure to make such corrections shall result in audits being resumed by the state auditor until such irregularities, procedures, or illegal actions are corrected and fees for such audits, so resumed, shall be 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 subdivisions in making and otherwise preparing the reports of audits herein provided for. All fees for the audits herein provided shall be paid by the subdivision audited to the state treasurer and by him credited to the general fund of the state.

Approved March 22, 1985

CHAPTER 562

HOUSE BILL NO. 1045
(Legislative Council)
(Interim Budget "B" Committee)

STATE DEBT REPORT BY STATE AUDITOR

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 requiring a report on outstanding debt issues of the state.

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

* SECTION 1. AMENDMENT. Section 54-10-01 of the North Dakota Century Code is hereby amended and reenacted to read 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 of the books, records, accounting methods, and internal controls of any and all state agencies, including the occupational and 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 charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to all agencies which receive and expend moneys from other than the general fund, unless for good cause the amounts charged ~~shall be~~ are waived by the auditor for a one-year period of time with such the waiver being subject to annual renewal after proper application has been filed with the auditor. The governing board of any occupational and professional boards and commissions board or commission shall provide

* NOTE: Section 54-10-01 was also amended by section 1 of Senate Bill No. 2158, chapter 561.

for an audit at least 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 the report is in the form and style as prescribed by the state auditor, the state auditor shall not audit such board or commission.

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.
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.
- 4- 5. Perform such other duties as are or may be prescribed by law.

Approved March 1, 1985

CHAPTER 563

HOUSE BILL NO. 1114
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

CLAIMS AGAINST THE STATE FOR ACTS OF STATE INSTITUTION RESIDENTS

AN ACT to amend and reenact subsection 1 of section 54-14-03.2 of the North Dakota Century Code, relating to claims against the state for acts of residents of the state institutions.

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

SECTION 1. AMENDMENT. Subsection 1 of section 54-14-03.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 office of the budget. 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, Grafton state school, San Haven, state penitentiary, state farm, and North Dakota industrial school, school for the blind, and school for the deaf.

Approved March 1, 1985

CHAPTER 564

SENATE BILL NO. 2192
(Committee on State and Federal Government)
(At the request of the Industrial Commission)

HOUSING FINANCE AGENCY BOND RESTRICTIONS

AN ACT to amend and reenact section 54-17-07.4 of the North Dakota Century Code, relating to the restriction that requires housing finance agency bonds to be sold at not less than ninety-five percent of par; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 54-17-07.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-07.4. Housing revenue bonds. In order to fund its housing finance programs, the industrial commission is authorized to issue revenue bonds or evidences of debt and indebtedness of the state which shall be sold at not less than ninety-five percent of par plus any accrued interest. The principal of and interest on such bonds shall be payable only from revenues generated under the applicable housing finance programs. The bonds shall not constitute a debt of the state of North Dakota and shall contain a statement to that effect on their face. The bonds may be sold at public or private sale, shall mature not more than fifty years from their date or dates, and shall contain such terms and provisions as the commission shall determine. The commission may capitalize from bond proceeds all expenses incidental to the issuance of the bonds or to the applicable housing finance program, including, without limitation, any reserves for the payment of the bonds. All revenue bonds issued by the commission to fund a housing finance program shall be secured separately from revenue bonds issued to fund its other housing finance programs.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 565

HOUSE BILL NO. 1321
(Representatives Martinson, Nalewaja, Kloubec)
(Senators Kilander, Lodoen, Reiten)

TRANSFER OF UNUSED CEILING ON HOUSING REVENUE BONDS

AN ACT to amend and reenact section 54-17-07.5 of the North Dakota Century Code, relating to the reversion to the industrial commission of any unused portion of the annual state ceiling for the issuance of single family housing revenue bonds allocated to home rule cities.

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

SECTION 1. AMENDMENT. Section 54-17-07.5 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-07.5. State reallocation under the Mortgage Subsidy Bond Tax Act of 1980. Pursuant to sections 103A(g), 103A(g)(4), and 103A(g)(6)A of the Internal Revenue Code of 1954, hereafter referred to as the "code", the limit for housing revenue bonds to be issued shall be allocated as follows:

1. To the industrial commission to fund its housing home mortgage and mobile home and manufactured housing finance programs, seventy-five percent of the "state ceiling", as defined in section 103A(g)(4) of the code.
2. To home rule cities now or hereafter authorized to issue bonds subject to section 103A(g) of the code, twenty-five percent of the "state ceiling".

The applicable limit for bonds of any home rule city shall be determined by multiplying twenty-five percent of the state ceiling by a fraction, the numerator of which is the population of the home rule city as shown in the 1980 most recently published federal decennial census and the denominator of which is the aggregate population of all home rule cities now or hereafter authorized to issue bonds as shown in the 1980 most recently published federal decennial census. The governing board of any home rule city referred to in this section may by appropriate resolution or legislative action transfer to any other such home rule city or cities or to the industrial commission its local portion of the

state ceiling for any calendar year, such transfer to be irrevocable upon enactment in accordance with law. If a home rule city elects to issue housing revenue bonds, it shall, prior to issuance, file with the industrial commission a notice of intention to issue housing revenue bonds setting forth the maximum principal amount of housing revenue bonds to be issued and the anticipated date of issuance. Any local portion of the state ceiling granted to the home rule cities for a calendar year remaining on the first Monday of December, for which no notice of intention to issue housing revenue bonds has been filed with the industrial commission, is deemed to have been transferred to the industrial commission.

Approved March 14, 1985

CHAPTER 566

SENATE BILL NO. 2233
(Committee on State and Federal Government)
(At the request of the Industrial Commission)

HOUSING FINANCE AGENCY LOAN ORIGINATION TERMS

AN ACT to amend and reenact section 54-17-07.7 of the North Dakota Century Code, relating to the granting to the North Dakota industrial commission, acting as the North Dakota housing finance agency, the authority not to require program restrictions necessary to the exemption from federal income taxes of the interest payable on its housing revenue bonds; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 54-17-07.7 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-07.7. Terms of loans. Notwithstanding any other provision of law, the industrial commission is authorized to require, as a condition of the origination of loans and mortgage loans made pursuant to any of its housing finance programs or purchase of loans and mortgage loans to be purchased by it, prepayment penalties, restrictions upon assumability, default provisions, rights to accelerate, rights to increase the interest rate, and any other terms the commission may determine to be necessary or desirable to assure the repayment of its housing revenue bonds and, unless such conditions of origination or other terms are not required by the commission, the exemption from federal income taxes of the interest payable on its housing revenue bonds under the Internal Revenue Code of 1954. All such terms shall be enforceable by the originator, the commission, or any successor holder of the loans or mortgage loans unless expressly waived in writing by or on behalf of the commission.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 567

SENATE BILL NO. 2496
(David, Stromme)

HOUSING FINANCE AGENCY CONFIDENTIALITY

AN ACT to create and enact section 54-17-07.8 of the North Dakota Century Code, relating to the confidentiality of state housing finance agency records.

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

SECTION 1. Section 54-17-07.8 of the North Dakota Century Code is hereby created and enacted to read as follows:

54-17-07.8. Confidentiality of housing finance agency records. The following records of the housing finance agency are confidential and are not public records:

1. Personal or financial information of a participant in any of the housing finance agency's programs, obtained directly or indirectly, except for routine credit inquiries or as required by court order.
2. Internal or interagency memorandums or letters of a personal nature which are not available by law to a party, except insofar as they are available in litigation with the agency.
3. Personal financial statements which the industrial commission requires of any housing finance agency employee or member of the housing finance agency's advisory board.

Approved March 22, 1985

CHAPTER 568

SENATE BILL NO. 2230
(Committee on State and Federal Government)
(At the request of the Industrial Commission)

HOUSING FINANCE AGENCY INSTRUMENTS

AN ACT to create and enact a new section to chapter 54-17 of the North Dakota Century Code, authorizing the execution of instruments affecting interests in real property by personnel of the North Dakota housing finance agency; and to declare an emergency.

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

SECTION 1. A new section to chapter 54-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Execution of instruments. In the absence of any provision regulating the execution and acknowledgement of conveyances, transfers, assignments, releases, satisfactions, or other instruments affecting liens on, title to, or interest in real estate, the executive director or the director of financial programs may execute and acknowledge such instruments on behalf of the industrial commission acting as the North Dakota housing finance agency.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 569

SENATE BILL NO. 2208
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

STUDENT LOAN REVENUE BONDS

AN ACT to amend and reenact section 54-17-25 of the North Dakota Century Code, relating to the issuance by the industrial commission of student loan revenue bonds.

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

SECTION 1. AMENDMENT. Section 54-17-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-25. Bonds authorized - Establishment of secondary market program. Whenever the industrial commission decides that it is in the public interest to diminish the investment of state funds in United States government guaranteed or reinsured or North Dakota guaranteed student loans, that it will be difficult to divest the state of appreciable amounts of such loans by piecemeal offering to the investing and saving public, that business conditions are favorable to a state-sponsored program to consolidate state-held student loans, and to enlarge private participation in such loans, the commission may by plenary resolution duly adopted in accordance with the provisions hereof authorize preparation, sale, and issuance of revenue bonds of North Dakota in such amounts and at such times and in such form, which may include the issuance of bonds the interest income on which is subject to federal and North Dakota income taxes, as the commission shall determine to be for the public good. The bonds shall be a paramount charge upon a sufficient designated portion of the resources of the student loan trusts, subject only to necessary administrative expenses of the trusts duly appropriated out of the interest earning resources thereof. The bonds may bear such rate or rates of interest as the commission may provide. The bonds shall have all of the qualities and incidents of negotiable paper and shall not be subject to taxation by the state of North Dakota or by any county, municipality, or political subdivision therein. The bonds shall be payable solely out of the separate resources generated respectively from collection of payments on and earnings and proceeds of (1) United States government guaranteed or reinsured or (2) North Dakota guaranteed student loans, and shall

respectively so recite. They shall not be indebtedness of the state of North Dakota or of any agency, board, department, or officer or agent thereof. Without limiting the foregoing, the commission may request the organization of a nonprofit corporation meeting the requirements of section 103(e) of the Internal Revenue Code of 1954, as amended, and enter into one or more agreements with such corporation providing for the establishment of a secondary market program in the state of North Dakota for the acquisition by the corporation of such loans made pursuant to title IV, part B of the Higher Education Act of 1965, as amended, as the commission shall, in its discretion, deem advisable.

Approved March 22, 1985

CHAPTER 570

SENATE BILL NO. 2341
(Nething, Lodoen, Stromme)

VIETNAM VETERANS BONUS BOND SINKING FUND TRANSFER

AN ACT to amend and reenact section 54-17.1-08 of the North Dakota Century Code, relating to transfer of funds from the Vietnam veterans' bonus bond sinking fund.

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

* SECTION 1. AMENDMENT. Section 54-17.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17.1-08. Transfer of balance. Upon the retirement of all bonds provided for in this chapter, together with the interest thereon, any the sum of six hundred sixteen thousand three hundred sixty-five dollars from the sinking fund shall be transferred by the treasurer to the veterans' postwar trust fund. Any balance remaining in the sinking fund shall be transferred by the treasurer to the general fund.

Approved April 15, 1985

* NOTE: Section 54-17.1-08 was also amended by section 3 of House Bill No. 1515, chapter 394.

CHAPTER 571

HOUSE BILL NO. 1662
(Strinden)

(Approved by the Committee on Delayed Bills)

NORTH DAKOTA BUILDING AUTHORITY POWERS AND FUNDING

AN ACT to establish the industrial commission as the North Dakota building authority and to set out its powers and duties; to provide authorization for the issuance of evidences of indebtedness and for the construction of various buildings and facilities for state agencies, departments, and institutions; to provide a continuing appropriation; and to declare an emergency.

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

SECTION 1. Definitions. As used in sections 1 through 20 of this Act, unless the context or subject matter requires otherwise:

1. "Commission" means the industrial commission acting as the North Dakota building authority created under this Act.
2. "Evidences of indebtedness" means bonds, notes, debentures, and other evidences of indebtedness issued by the commission on behalf of the state of North Dakota to evidence money owed or borrowed.
3. "Project" or "projects" means any building or buildings primarily for the use of the state, including related structures, parking facilities, equipment, improvements, real and personal property or any interest therein, including lands under water, space rights and air rights, and other appurtenances and facilities necessary or convenient to the use or operation of the building or buildings, acquired, owned, constructed, reconstructed, extended, rehabilitated, or improved by the commission.
4. "Project cost" means the total cost of acquisition and construction of a project or projects and all costs of issuance, financing, and interest during construction included in the principal amount of evidences of indebtedness issued.

5. "State" means any branch of North Dakota government or any office, department, board, commission, bureau, division, public authority or corporation, agency, or instrumentality of the state.

SECTION 2. Commission - Evidence of indebtedness issuance. The commission is a North Dakota instrumentality empowered, subject to legislative authorization, to issue evidences of indebtedness to make funds available for a project or projects as directed by the legislative assembly.

SECTION 3. Powers. Except as otherwise limited by sections 1 through 20 of this Act, the commission may:

1. Enter into agreements with respect to its projects, operation, properties, and facilities, subject to agreements with holders of evidences of indebtedness.
2. Sue and be sued.
3. Make and enter into all contracts and all agreements necessary or incidental to the performance of its duties and the exercise of its powers.
4. Acquire, own, hold, assign, exchange, lease, mortgage, or pledge or grant security interests in a project or projects in the exercise of its powers and the performance of its duties.
5. Acquire, construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the acquisition, construction, reconstruction, improvement, alteration, or repair of any project and let, award, and enter into construction contracts, purchase orders, and other contracts with respect thereto in the manner determined by the commission.
6. Sell, lease, assign, transfer, convey, exchange, mortgage, or otherwise dispose of or encumber any project or other property no longer necessary to carry out the public purposes of the commission and, in the case of the sale of any project or property, to accept a purchase money mortgage in connection therewith; and to lease, repurchase, or otherwise acquire and hold any project or property which the commission has sold, let, or otherwise conveyed, transferred, or disposed of.
7. Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on terms and conditions it deems advisable.
8. Acquire by purchase, lease, or otherwise, on terms and conditions and in a manner as it determines to be proper, or by the exercise of the power of eminent domain, except

with respect to lands owned by the state or any public lands, any land and other property or equipment, which it may determine is reasonably necessary for any project.

9. Sell, lease, rent, sublease, or otherwise dispose of, to any person, firm, or corporation, any surplus space in any project over and above that sold, leased, rented, subleased, or otherwise disposed of to the state and establish and revise the purchase price, rents, or charges for the surplus space.
10. Manage or operate any project or real or personal property or equipment related to a project whether owned or leased by the commission or any state agency, and enter into agreements with any state agency, any political subdivision, any local governmental agency, or with any person, firm, association, partnership, or corporation, either public or private, for the management of a project or related property.
11. Consent to any modification, amendment, or revision of any contract, lease, or agreement to which the commission is a party, subject to the provisions of any contract with holders of evidences of indebtedness.
12. Issue its evidences of indebtedness and to secure the same and provide for the rights of the holders thereof as provided in sections 1 through 20 of this Act.
13. Invest moneys of the commission not required for immediate use, including proceeds from the sale of any evidences of indebtedness in securities and other investments including evidences of indebtedness as the commission determines to be prudent, subject to any agreement with holders of evidences of indebtedness.
14. Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable.
15. Purchase evidences of indebtedness issued by the commission out of any funds or money not pledged to or necessary for some other purpose and hold, cancel, or resell such evidences of indebtedness, subject to any agreement with holders of evidences of indebtedness.

SECTION 4. Purpose of commission. The public purpose of the commission is to promote the general welfare of the citizens of this state by providing projects for use by the state in providing public services by altering, repairing, maintaining, or constructing buildings primarily for use by the state and making any improvements connected to those buildings or pertaining to those buildings and necessary to the use of those buildings in providing services to the public.

SECTION 5. Transfer of state property to commission - Services by state agencies. The state may transfer jurisdiction of or title to any property under its control to the commission. All state agencies may render any and all services to the commission as are within the area of their respective governmental functions and as may be required by the commission, including acting as agent for the commission in furtherance of performing its duties.

SECTION 6. Lease of facilities and sites to state agencies authorized - Commencement of payments under lease. The commission may lease any project to the state. The leases may be entered into contemporaneously with any financing to be done by the commission and payments under the terms of the lease shall begin at any time after execution of the lease.

SECTION 7. Terms, conditions, and rental under leases - Automatic biennial extension provisions. Leases may be entered into by the commission:

1. Upon terms, conditions, and lease rentals, subject to available appropriations, as in the judgment of the commission are in the public interest; and
2. For an original term of not to exceed two years, with an automatic extension of the term of the lease, unless specifically rejected by the legislative assembly, for a term of two years from the expiration of the original term of the lease and for two years from the expiration of each extended term of the lease, until the original term of the lease has been extended for a total number of years to be agreed upon by the parties at a lease rental which, if paid for the original term and for each of the full number of years for which the term of the lease may be extended, will amortize the total project cost of the project.

The lease rental must be paid at the times agreed upon by the parties to the lease.

SECTION 8. State's option to purchase - Conveyance on exercise of option. The lease must provide that the state may, at the expiration of the original or any extended term, purchase the project at a stated price, which must be the balance of the total project cost not amortized by the payment of rents previously made by the state. The lease must provide that if the option to purchase the project has been exercised or if the lease has been extended for the full number of years which it may be extended, and all rents and payments provided for in the lease have been made and all project costs have been paid, the commission shall convey its interest in the project to the lessee.

SECTION 9. Insurance and credit enhancements added to rental payments. The lease may provide that the state shall provide insurance or, as additional rent for the leased project, pay the cost of insuring the project against loss or damage in such sum

agreed to by the parties. The lease may also provide for payment of the cost of such credit enhancements as in the judgment of the commission may be required for sale of the evidences of indebtedness, including bond insurance or letters of credit.

SECTION 10. Appropriations and funds from which rent payable and right to project upon nonpayment - Commission's power to use or sell facilities for other purposes on nonpayment of rent. The lease must provide that rents are payable solely from appropriations to be made by the legislative assembly for the payment of the lease rent or money available to the lessee not requiring appropriation, money generated from charges made for use of the project, any revenues derived by the commission from the operation of the project, or any combination of such moneys. The commission upon nonpayment of lease rents is immediately entitled to the peaceable possession, access, and occupancy of the project and all appurtenances and easements appertaining thereto, and may maintain and operate the project or execute leases for the project or sell the project to political subdivisions of the state or private persons or entities for any purpose.

SECTION 11. Costs and reserves to be covered by rent and charges. Lease rentals for a project must be sufficient at all times to pay the maintenance and operation costs for the project, unless maintenance and operation costs are otherwise provided for under a lease, the principal of and interest on any evidence of indebtedness, and a proportion of the administrative expenses of the commission as provided for by each lease, and the reserves as may be provided in the resolutions authorizing the issuance of evidences of indebtedness.

SECTION 12. Tax exemption of commission's property. All property owned by the commission is exempt from taxation.

SECTION 13. Resolutions for evidences of indebtedness authorized - Maximum amount outstanding - Legislative approval required. The commission may at any time provide by resolution for the issuance of evidences of indebtedness for the purpose of paying all or any part of the cost of one or any combination of projects; provided, however, that no project may be leased by the commission to the state, nor any evidences of indebtedness be sold to raise the funds for payment, acquisition, or construction of a project until the legislative assembly by law authorizes the specific project or projects and declares the project or projects to be in the public interest.

SECTION 14. Purposes for which evidences of indebtedness issue - Refunding and refinancing - Pledge of income. To accomplish its purposes, the commission may borrow and issue and sell evidences of indebtedness in an amount or amounts as the commission may determine, but not in excess of legislative authorization, plus costs of issuance, financing, interest during construction, and any evidences of indebtedness funded reserve funds required by agreements with or for the benefit of holders of evidences of indebtedness for the purpose of acquiring, constructing, completing,

or remodeling, maintaining, or equipping any project or projects. The commission may refund and refinance the evidences of indebtedness from time to time as often as it is advantageous and in the public interest to do so; and may pledge any and all income of the commission, and any revenues derived by the commission or the state from a project or any combination thereof, to secure payment or redemption of the evidences of indebtedness.

SECTION 15. Evidences of indebtedness authorized - Interest rates - Exemption from taxation - Term. The commission, pursuant to legislative authorization, may, by resolution, authorize preparation, sale, and issuance of evidences of indebtedness of the commission in amounts and at such times, in fully registered form, with final maturity of not more than thirty years. The evidences of indebtedness may bear the fixed or variable rate or rates of interest and may be sold at the price or prices as the commission may provide at an average net interest cost not in excess of twelve percent per annum for evidences of indebtedness sold at private sale, except that there is no interest rate ceiling on issues sold at public sale or to the state. The evidences of indebtedness are not subject to taxation by the state or by any county, municipality, or political subdivision in the state. The evidences of indebtedness are not indebtedness of the state or of any officer or agent of the state within the meaning of any statutory or constitutional provision.

SECTION 16. Revenues, appropriations, funds, and income from which evidences of indebtedness payable. Evidences of indebtedness are payable solely from:

1. Revenues to be derived by the commission from the operation of a project or projects;
2. Income to be derived from rentals paid pursuant to leases to the state, or from leases to others as provided by this Act;
3. Funds appropriated by the legislative assembly; and
4. Any other revenue, income, or funds available to the commission.

SECTION 17. Covenants and contracts with holders of evidences of indebtedness. In any resolution of the commission relating to the issuance of any evidence of indebtedness, the commission may provide by covenants with the holders of the evidences of indebtedness, to:

1. Secure the evidences of indebtedness.
2. Covenant against pledging all or any part of its revenues, receipts, or proceeds, or against mortgaging or leasing all or any part of its real or personal property when owned or thereafter acquired or against permitting or suffering any lien. Any pledge of revenues, receipts, moneys, funds, levies, sales agreements, service

contracts, or other property or instruments made by the commission are valid and binding from the time the pledge is made. The revenues, receipts, moneys, funds, or other property pledged and thereafter received by the commission are immediately subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the commission irrespective of whether the parties have notice of the claim. Neither the resolution nor any other instrument by which a pledge under this section is created need be filed or recorded except in the records of the commission.

3. Covenant as to any evidences of indebtedness to be issued and the limitations on the evidence of indebtedness and their terms and conditions as to the custody, application, investment, and disposition of their proceeds, as to the sources and methods of the payment, and as to the rank or priority of the evidence of indebtedness.
4. Provide for the replacement of lost, stolen, destroyed, or mutilated evidences of indebtedness.
5. Provide for the rights and liabilities, power and duties arising upon the breach of any covenant, condition, or obligation; prescribe the events of default and the terms and conditions upon which any or all of the evidences of indebtedness of the commission become or may be declared due and payable before maturity; and provide the terms and conditions upon which the declaration and its consequences may be waived.
6. Vest in a trustee or trustees within or without the state such property, rights, powers, and duties in trust as the commission may determine.
7. Make covenants other than or in addition to the covenants authorized by this Act of like or different character, and to make the covenants to do or refrain from doing acts and things as may be necessary, or convenient and desirable, to better secure evidences of indebtedness or which, in the absolute discretion of the commission will tend to make its evidences of indebtedness more marketable, notwithstanding that the covenants, acts, or things may not be enumerated in this Act.

SECTION 18. Validity of signature by officers. Evidences of indebtedness must be executed by a member or members of the commission as designated by the commission, or by facsimile signature and the manual signature of a designated authenticating agent. Any evidences of indebtedness bearing the signature of members in office at the date of signing are valid and binding for all purposes notwithstanding that before delivery any person whose

signature appears on the evidences of indebtedness has ceased to be a member.

SECTION 19. Restrictions on obligation stated on face of evidences of indebtedness. Evidences of indebtedness must state upon their face that they are payable solely from revenues derived by the commission as provided in this Act, including revenues from the operation of projects acquired, constructed, completed, remodeled, or equipped in whole or in part with the proceeds of the sale of such evidences of indebtedness, including income to be derived from rental leases as provided by sections 1 through 20 of this Act. Evidences of indebtedness must state upon their face that they do not constitute an obligation of the state within the meaning of any statutory or constitutional provision.

SECTION 20. Disposition of income - Building authority fund. The proceeds of and any revenue derived from the sale of evidences of indebtedness, charges, fees, or rentals, and all other revenue derived from any project undertaken pursuant to sections 1 through 20 of this Act must be held in trust for the purposes of sections 1 through 20 of this Act, in a special fund known as the building authority fund. Disbursements shall be made from the fund upon the resolution of the commission. The building authority fund established by this Act may contain such accounts as authorized by the commission.

SECTION 21. PROJECT AUTHORIZATION. The industrial commission may construct and acquire and issue evidences of indebtedness under sections 1 through 20 of this Act as necessary to defray project costs of the following projects, hereby declared to be in the public interest, during the biennium beginning July 1, 1985, and ending June 30, 1987:

NAME OF AGENCY, DEPARTMENT, OR INSTITUTION	TYPE OF FACILITY	STATE FUNDS
State penitentiary	Phase II construction and renovation project	\$ 7,500,000
Grafton state school	Renovation of Sunset Hall, Collette Auditorium, and tunnel replacement	3,900,000
State hospital	Central store building, and air-conditioning in the adolescent center, receiving and treatment center, medical building and central dining center	<u>3,400,000</u>
Total major capital construction		\$ 14,800,000

The industrial commission shall issue evidences of indebtedness authorized under this section with the condition that lease rental payments need not begin until July 1, 1987, and with the provision

that the evidences of indebtedness are callable five years after issuance. The authority of the industrial commission to issue evidences of indebtedness under sections 1 through 20 of this Act ends on June 30, 1987, but the industrial commission shall have continued authority to exercise all other powers granted to it under this Act and to comply with any covenants entered into before that date.

SECTION 22. CONTINUING APPROPRIATION. The moneys received by the commission and the state agencies and institutions from the sale of evidences of indebtedness, lease rental payments, and from revenue generated by projects authorized under section 21 of this Act are hereby appropriated as a continuing appropriation for the acquisition of these authorized projects and the payment of lease rentals for these projects.

SECTION 23. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 16, 1985

CHAPTER 572

SENATE BILL NO. 2189
(Committee on State and Federal Government)
(At the request of the Commissioner of Agriculture)

EXPORT TRADING COMPANIES

An Act to create and enact a new subsection to section 54-18-04 of the North Dakota Century Code, relating to the powers and duties of the industrial commission in operating the North Dakota mill and elevator association.

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

SECTION 1. A new subsection to section 54-18-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

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. 1843] 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.

Approved March 22, 1985

CHAPTER 573

HOUSE BILL NO. 1654

(Mertens)

(Approved by the Committee on Delayed Bills)

UNIFORM MECHANICAL CODE

AN ACT to amend and reenact subsection 1 of section 54-21.3-03 of the North Dakota Century Code, relating to the incorporation of the Uniform Mechanical Code as part of the state building code; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 1 of section 54-21.3-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state building code shall consist of the 1982 Uniform Building Code with any existing appendices and supplements including the Uniform Mechanical Code with any existing appendices and supplements as referenced by the Uniform Building Code. This code shall be implemented by and may be amended by rules adopted by the director of the office of management and budget pursuant to chapter 28-32.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 31, 1985

CHAPTER 574

HOUSE BILL NO. 1110
(Committee on State and Federal Government)
(At the request of the Board of Higher Education)

FIXED ASSET MINIMUM REPORTING VALUE FOR STATE AGENCIES

AN ACT to amend and reenact section 54-27-21 of the North Dakota Century Code, relating to the requirements for fixed asset minimum reporting value for state departments, agencies, and institutions.

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

SECTION 1. AMENDMENT. Section 54-27-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-27-21. Fixed asset minimum reporting value. All state departments, agencies, and institutions shall include all fixed assets under their control in their financial statements, except those having a value of ~~one~~ three hundred dollars or less. The state auditor is authorized to provide for the written exemption of specific fixed assets having a value of more than ~~one~~ three hundred dollars when such exemption is justified upon generally accepted accounting principles.

Approved March 1, 1985

CHAPTER 575

HOUSE BILL NO. 1046
(Legislative Council)
(Interim Budget "B" Committee)

STATE BONDS AND DEBENTURES

AN ACT to repeal chapters 6-09.3, 54-31, and 54-32 of the North Dakota Century Code, and sections 1 and 2 of chapter 108 of the 1941 Session Laws of North Dakota, relating to irrigation development debentures, North Dakota mill and elevator bonds, and North Dakota mill and elevator refunding bonds.

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

SECTION 1. REPEAL. Chapters 6-09.3, 54-31, and 54-32 of the North Dakota Century Code, and sections 1 and 2 of chapter 108 of the 1941 Session Laws of North Dakota are hereby repealed.

Approved March 1, 1985

CHAPTER 576

HOUSE BILL NO. 1651
(Kloubec)

(Approved by the Committee on Delayed Bills)

UNIFORM STATE LAWS REVIEW

AN ACT to amend and reenact subsection 4 of section 54-35-02 and section 54-55-04 of the North Dakota Century Code, relating to the powers and duties of the legislative council and the commission on uniform state laws.

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

SECTION 1. AMENDMENT. Subsection 4 of section 54-35-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. To study and promote uniformity of legislation in the United States upon subjects upon which uniformity is desirable and to confer with the commissioners or similar groups appointed for the same purpose by any other state in drafting uniform laws to be submitted for the approval and adoption by the several states and through such member or members or council staff persons as the council may appoint to meet annually with the conference of commissioners on uniform state laws for the promotion of uniformity of legislation in the United States and join with it in such measures as may be deemed most expedient to advance the objects of such conference. The council shall receive, review, and make recommendations on uniform and model laws recommended to it by the state commission on uniform state laws.

SECTION 2. AMENDMENT. Section 54-55-04 of the North Dakota Century Code is hereby amended and reenacted to read 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. ~~Prior to~~ During the interim between

legislative sessions, the commission shall 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.

Approved March 27, 1985

CHAPTER 577

HOUSE BILL NO. 1108
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

DATA PROCESSING EQUIPMENT

AN ACT to amend and reenact subsection 3 of section 54-44.2-02 of the North Dakota Century Code, relating to the purchase of data processing equipment; and to repeal section 54-44.2-03 of the North Dakota Century Code, relating to the transfer of electronic data processing equipment acquired by state agencies prior to July 1, 1969.

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

SECTION 1. AMENDMENT. Subsection 3 of section 54-44.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Have the authority to purchase or lease such additional equipment or replace, including by trade or resale, present equipment as may be necessary to carry out the provisions of this chapter. Each executive branch department, agency, or institution, except the institutions under the control of the board of higher education, the job service North Dakota, and the office of adjutant general, shall submit to the director of central data processing for his approval or disapproval a written request for data processing services which require new data processing applications. A request shall also be submitted for modifications to existing data processing applications which are expected to increase the cost of operating such data processing applications by more than fifteen percent. The director of central data processing shall have authority to approve or disapprove the lease, purchase, or other contractual acquisition of additional or new electronic data processing services or equipment by executive branch agencies, except the institutions under the control of the board of higher education, the job service North Dakota, and the office of adjutant general. ~~if an equipment purchase or rental is authorized, the equipment shall become the property of the office of central data processing.~~ The director of central data processing may authorize a user agency to house and operate electronic data processing equipment.

SECTION 2. REPEAL. Section 54-44.2-03 of the North Dakota Century Code is hereby repealed.

Approved March 1, 1985

CHAPTER 578

SENATE BILL NO. 2442
(Senators Lodoen, D. Meyer, W. Meyer)
(Representatives Martinson, Moore)

STATE ARCHITECT, ENGINEER, AND SURVEYING CONTRACTS

AN ACT to provide for the manner in which state agencies shall contract for architect, engineer, and land surveying services; to create and enact a new subdivision to subsection 6 of section 28-32-01 of the North Dakota Century Code, relating to a definition of rules adopted by certain agencies; and to declare an emergency.

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

SECTION 1. Definition. "Architect, engineer, and land surveying services" are those professional services associated with the practice of architecture, professional engineering, professional land surveying, landscape architecture, and interior design pertaining to construction, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, construction management, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services, except for professional services related to prefabricated steel for bridge purposes.

SECTION 2. Applicability - Policy. Architect, engineer, and land surveying services shall be procured as provided in this chapter. It is the policy of this state that all North Dakota state agencies shall negotiate contracts for services on the basis of demonstrated competence and qualification for the particular type of services required.

SECTION 3. Procurement procedures.

1. Each using agency shall establish its own architect, engineer, and land surveying services selection committee hereinafter referred to as the agency selection committee, which shall be composed of those individuals whom the

agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The head of the using agency or his qualified, responsible designee shall sit as a member of the agency selection committee for the purpose of coordinating and accounting for the committee's work.

2. The agency selection committee shall be responsible for all of the following:
 - a. Developing a description of the proposed project.
 - b. Enumerating all required professional services for that project.
 - c. Preparing a formal invitation to firms for submission of information. The invitation shall include but not be limited to the project title, the general scope of work, a description of all professional services required for that project, and the submission deadline. The invitation or notice thereof shall be published. Upon written request, the agency shall also mail copies of the invitation to any interested party. The manner in which this shall be published, the content of the publication, and the frequency of the publication, shall be established by regulation of the agency selection committee.
3. The date for submission of information from interested persons or firms in response to an invitation shall be not less than twenty-one days after publication of the invitation. Interested architect, engineer, and land surveying persons or firms shall be required to respond to the invitation with the submission of the information required in general services administration forms SF 254 and SF 255, architect-engineer related services questionnaire for specific project, or such similar information as the agency selection committee may prescribe by rule.
4. Following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. If less than three persons or firms have responded to the advertisement, the committee shall readvertise or hold interviews with those who did respond. The agency selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and

enumerate the reasons of the committee for selecting those to be interviewed. This written report shall be available to the public upon written request. The purpose of the interviews shall be to provide such further information as may be required by the agency selection committee to fully acquaint itself with the relative qualifications of the several interested persons or firms.

5. The agency selection committee shall evaluate each of the persons or firms interviewed on the basis of the following criteria:
 - a. Past performance.
 - b. The ability of professional personnel.
 - c. Willingness to meet time and budget requirements.
 - d. Location.
 - e. Recent, current, and projected workloads of the persons or firms.
 - f. Related experience on similar projects.
 - g. Recent and current work for the agency.

Based upon these evaluations, the agency selection committee shall select the three which, in its judgment, are most qualified, ranking the three in priority order. The agency selection committee's report ranking the interviewed persons or firms shall be in writing and shall include data substantiating its determinations. This data shall be available to the public upon written request.

6. The agency selection committee shall submit its written report ranking the interviewed persons or firms to the governing body of the using agency for its evaluation and approval. When it is determined that the ranking report is final by the agency, written notification of the selection and order of preference shall be immediately sent to all of those that responded to the agency selection committee's invitation to submit information.
7. The governing body of the using agency or its designee shall negotiate a contract for services with the most qualified person or firm, at a compensation which is fair and reasonable to the state, after notice of selection and ranking. Should the governing body of the using agency or its designee be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third most qualified until a satisfactory contract has been

negotiated. If no agreement is reached, three additional persons or firms in order of their competence and qualifications shall be selected after consultation with the agency selection committee, and negotiations shall be continued in the same manner until agreement is reached.

SECTION 4. Exception.

1. All state agencies securing architect, engineer, or land surveying services for projects for which the fees are estimated not to exceed ten thousand dollars may employ the architects, engineers, and land surveyors by direct negotiation and selection, taking into account all of the following:
 - a. The nature of the project.
 - b. The proximity of the architect, engineer, or land surveying services to the project.
 - c. The capability of the architect, engineer, or land surveyor to produce the required services within a reasonable time.
 - d. Past performance.
 - e. Ability to meet project budget requirements.

This procedure shall still follow state policy set forth above.

2. Fees paid pursuant to this section during the twelve-month period immediately preceding negotiation of the contract by any single state agency for professional services performed by any one architectural, engineering or land surveying person or firm shall not exceed twenty thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish the state agency with which the firm is negotiating a list of professional services, including the fees paid, performed for the state agency during the twelve months immediately preceding the contract being negotiated.

SECTION 5. Splitting projects or services contracts prohibited. No using agency shall separate service contracts or split or break projects for the purpose of circumventing the provisions of this chapter.

SECTION 6. A new subdivision to subsection 6 of section 28-32-01 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A rule adopted by an agency selection committee under section 3 of this Act.

SECTION 7. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 31, 1985

CHAPTER 579

SENATE BILL NO. 2376
(Stenehjem)

ENEMY ATTACK GOVERNMENT

AN ACT to repeal chapters 54-47 and 54-48 of the North Dakota Century Code, relating to continuity of state and local government in the event of a disaster caused by enemy attack.

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

SECTION 1. REPEAL. Chapters 54-47 and 54-48 of the North Dakota Century Code are hereby repealed.

Approved March 22, 1985

CHAPTER 580

HOUSE BILL NO. 1178
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

**PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD
OF DIRECTORS**

AN ACT to amend and reenact subsection 3 of section 54-52-03 of the North Dakota Century Code, relating to the notice of elections and eligibility of board members of the public employees retirement system.

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

SECTION 1. AMENDMENT. Subsection 3 of section 54-52-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Three board members shall be elected from among the active participating members. The initial elected members shall be elected for terms which shall expire two years, three years, and four years after the date of establishment. Future Employees who have terminated their employment for whatever reason are not eligible to serve as elected members of the board. Board members shall be elected to a five-year term, pursuant to an election called for by the board. Notice of board elections shall be given to all active participating members. The time spent in performing duties as a board member shall not be charged against any employee's accumulated annual or any other type of leave.

Approved March 14, 1985

CHAPTER 581

HOUSE BILL NO. 1132
(Committee on Appropriations)
(At the request of the Public Employees Retirement System)

**PAYMENT OF FEES FROM PUBLIC EMPLOYEES
RETIREMENT SYSTEM FUNDS**

AN ACT to amend and reenact subsection 6 of section 54-52-04 of the North Dakota Century Code, relating to the exclusion of certain professional fees from the public employees retirement system's appropriation; and to declare an emergency.

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

* SECTION 1. AMENDMENT. Subsection 6 of section 54-52-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. The board shall select the funding agent or agents and establish an investment agreement contract. The contract shall authorize the funding agent or agents to hold and invest moneys for the system. No moneys of the system shall be invested by the board. ~~Said moneys~~ Moneys of the system shall 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. All securities, agreements, contracts, or instruments of value shall be delivered to the Bank of North Dakota, or its agents. Except for ~~dispensing~~ disbursing money for investment to the funding agent or agents, or paying prior service benefits, funding agent or agents management fees, performance measurement fees, actuarial consultant fees, auditors fees, or making withdrawal payments and refunds, the board shall expend money only for administrative purposes by preparing an appropriate voucher and submitting such voucher to the office of management and budget and as limited by the appropriation first made by the legislative assembly.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 14, 1985

* NOTE: Section 54-52-04 was also amended by section 3 of Senate Bill No. 2050, chapter 285.

CHAPTER 582

HOUSE BILL NO. 1127
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

JUDGES' RETIREMENT CONTRIBUTIONS

AN ACT to amend and reenact section 54-52-06.1 of the North Dakota Century Code, relating to the employer contribution for the judges' retirement plan.

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

SECTION 1. AMENDMENT. Section 54-52-06.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 shall be assessed and required to pay monthly five percent of the judge's monthly salary ~~paid to him, and such.~~ The assessment ~~shall~~ must be deducted and retained out of ~~his~~ the judge's salary in equal monthly installments. Effective July 1, 1985, the state shall contribute an amount equal to ~~thirteen and four-tenths~~ fifteen 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 shall 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.

Approved April 11, 1985

CHAPTER 583

HOUSE BILL NO. 1131
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PERS YEARS OF SERVICE CREDIT

AN ACT to amend and reenact subsection 1 of section 54-52-17 of the North Dakota Century Code, relating to the maximum number of years of service credit under the public employees retirement system.

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

SECTION 1. AMENDMENT. Subsection 1 of section 54-52-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date ~~or~~ postponed retirement date, or early retirement date, as defined in this section. ~~No participating member shall receive credit for more than thirty-five years of full-time employment unless such member has contributed to the plan or its predecessor established on July 1, 1966, in excess of thirty-five years; members who have contributed to these plans in excess of thirty-five years shall receive credit for the years of full-time employment after July 1, 1966.~~ Part-time employment will be recognized as full-time employment on such a prorated basis as the board may prescribe.

Approved March 14, 1985

CHAPTER 584

HOUSE BILL NO. 1384
(Mertens, Martinson)

PUBLIC EMPLOYEE RETIREMENT BENEFIT AGE

AN ACT to amend and reenact subdivision a of subsection 3 of section 54-52-17 of the North Dakota Century Code, relating to eligibility for retirement benefits under the public employees retirement system.

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

SECTION 1. AMENDMENT. Subdivision a of subsection 3 of section 54-52-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. Normal retirement date is the first day of the month next following the month in which the member attains the age of sixty-five years or when the member is at least the age of sixty and 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.

Approved March 27, 1985

CHAPTER 585

HOUSE BILL NO. 1129
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PERS BENEFIT CALCULATION

AN ACT to amend and reenact subdivision a of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to the calculation of service benefits under the public employees retirement system.

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

SECTION 1. AMENDMENT. Subdivision a of subsection 4 of section 54-52-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date shall be an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which shall be determined as follows:
- (1) Service benefit equals one and ~~twenty-hundredths~~ thirty-hundredths percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals one and ~~twenty-hundredths~~ thirty-hundredths percent of final average salary multiplied by the number of years of prior service employment.
 - (3) All participants retiring prior to July 1, ~~1983~~ 1985, will have their benefits calculated at one and ~~twenty-hundredths~~ thirty-hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, ~~1983~~ 1985.

Approved March 14, 1985

CHAPTER 586

HOUSE BILL NO. 1128
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PUBLIC EMPLOYEE OPTIONAL DEATH BENEFIT

AN ACT to amend and reenact subsection 6 of section 54-52-17 of the North Dakota Century Code, relating to optional death benefit payment under the public employees retirement system.

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

SECTION 1. AMENDMENT. Subsection 6 of section 54-52-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. If prior to retiring a member dies after completing ten years of eligible employment, but prior to retiring, 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; or
 - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies. If the spouse dies the provisions of subsection 8 shall be is applicable.

Approved March 27, 1985

CHAPTER 587

SENATE BILL NO. 2472 (Peterson)

LEGISLATIVE SERVICE RETIREMENT CREDIT

AN ACT to create and enact a new subsection to section 15-39.1-24, a new section to chapter 18-11, a new section to chapter 39-03.1, a new section to chapter 40-45, a new section to chapter 40-46, and a new section to chapter 54-52 of the North Dakota Century Code, relating to the purchase of retirement service credit by persons who have served in the legislative assembly under the teachers' fund for retirement, the alternate firemen's relief association retirement plan, the highway patrolmen's retirement system, city police pension plans, city employee pension plans, and the public employees retirement system.

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

SECTION 1. A new subsection to section 15-39.1-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. 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 2. A new section to chapter 18-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 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 3. A new section to chapter 39-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Purchase of legislative service credit. A contributor may, prior to retirement, purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while a member of the fund. The contributor shall pay for the service credit an amount equal to the required member contributions and the state contributions for that period of time plus interest as established by the board. 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 4. A new section to chapter 40-45 of the North Dakota Century Code is hereby created and enacted to read as follows:

Purchase of legislative service credit. A member of a policemen's pension fund under this chapter may, prior to retirement, purchase for inclusion in the period of service in the department the time during each legislative session spent serving as a member of the legislative assembly while a member of the pension fund. The member shall pay for this service an amount equal to the required member assessments and employer contributions plus interest as established by the board of trustees. 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 5. A new section to chapter 40-46 of the North Dakota Century Code is hereby created and enacted to read as follows:

Purchase of legislative service credit. An employee of a city having a pension fund under this chapter may, prior to retirement, purchase service for inclusion in the period of service required under this chapter for eligibility for retirement the time during each legislative session spent serving as a member of the legislative assembly while a member of the pension fund. The employee shall pay for this service an amount equal to the required member assessments and employer contributions plus interest as established by the board of trustees. 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 6. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Purchase of legislative service credit. A member may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. The member shall pay for this service credit an amount equal to the required member assessments and employer contributions plus interest as established by the board. 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.

Approved March 29, 1985

CHAPTER 588

HOUSE BILL NO. 1242
(Committee on State and Federal Government)
(At the request of the Legislative Compensation Commission)

FORMER LEGISLATOR STATE HEALTH GROUP MEMBERSHIP

AN ACT to amend and reenact section 54-52.1-03 of the North Dakota Century Code, relating to membership in the state employees' uniform group insurance program by former members of the legislative assembly.

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

* SECTION 1. AMENDMENT. Section 54-52.1-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-03. Employee participation in plan - Employee to furnish information - Benefits to continue upon retirement or termination. Any eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department. An eligible employee who requests enrollment shall be enrolled with the board by the employing department within five days after the expiration of the payroll period during which enrollment was requested. The employee's insurance coverage shall become effective on the date of his enrollment. Upon the termination of eligible employment of a member of the legislative assembly or upon the retirement of an eligible employee who is entitled to a retirement allowance from a department, board, or agency, or upon the termination of employment of an eligible employee not of retirement age who, upon retirement, will receive a deferred retirement allowance from a department, board, or agency, such employee may continue as a member of the uniform group under the provisions of this chapter; provided, that except for tenured faculty employees of state institutions of higher learning who have entered into agreed plans of retirement with the institution and subject to the rules of the state board of higher education no state contribution for such a retired or terminated employee shall be made, and the employee shall pay the premiums directly to the board. Upon the termination of employment where the employee is not a member of the legislative assembly or entitled to either retirement benefits or a deferred retirement allowance, such employee shall not continue as a member of the uniform group unless the employee was on

* NOTE: Section 54-52.1-03 was also amended by section 3 of Senate Bill No. 2156, chapter 205.

the uniform group insurance retiree billings as of July 1, 1974, but may continue on an individual basis with the carrier, with such coverage to be offered at the lowest possible rate, to be determined by the board. A member or former member of the legislative assembly may elect to continue membership in the uniform group within the applicable time limitations after either termination of eligible employment as a member of the legislative assembly or termination of other eligible employment. Each eligible employee requesting enrollment shall furnish the appropriate person in the employing department, board, or agency with such information and in such form as prescribed by the board to enable the enrollment of himself, or himself and his dependents, in the uniform group insurance program created by this chapter. In the event the participating employee is a teacher in a state charitable, penal, or educational institution who receives a salary or wages on a nine-month basis and has signed a contract to teach for the next ensuing school year, the agency shall make arrangements to include such employee in the insurance program on a twelve-month basis and make the contribution authorized by this section for each month of the twelve-month period.

Approved April 4, 1985

CHAPTER 589

HOUSE BILL NO. 1382
(Martinson)**PUBLIC EMPLOYEES' DEFERRED COMPENSATION
PROGRAM**

AN ACT to create and enact a new section to chapter 54-52.2 of the North Dakota Century Code, relating to the appointment of an executive director and other personnel by the state deferred compensation committee; and to amend and reenact sections 54-52.2-01 and 54-52.2-03 of the North Dakota Century Code, relating to the deferred compensation program for public employees.

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

SECTION 1. AMENDMENT. Section 54-52.2-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.2-01. Deferred compensation program for public employees - Contract. The state or any county, city, or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, fund a deferred compensation program for the employee. The deferred compensation program may consist of a contract, purchase, or investment in a fixed or variable life insurance or annuity contract from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state, a savings account at a federally insured financial institution or the Bank of North Dakota, an account with or managed by a dealer registered under chapter 10-04, or any combination of contracts or accounts authorized by this section, as specified by the employee. The committee shall specify methods of payment of deferred compensation funds to be selected by individual employees. The committee shall determine the number of employees participating in a deferred compensation program necessary to qualify for automatic payroll deduction.

SECTION 2. AMENDMENT. Section 54-52.2-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.2-03. **Deferred compensation program - Administration - Contract for services.** The administration of the deferred compensation program for each state agency, department, board, commission, or institution shall be under the direction of the state deferred compensation committee. The committee shall consist of three persons ~~who cannot participate in the deferred compensation program.~~ The governor shall appoint the initial committee and shall appoint persons to fill any vacancy occurring at the expiration of a term. Committee members shall select the person to fill any vacancy occurring prior to the expiration of a term. The initial terms of office are as follows: one member shall serve a one-year term, one member shall serve a two-year term, and one member shall serve a three-year term. The term of office thereafter is three years. Each county, city, or other political subdivision shall designate an officer to administer the deferred compensation program or appoint the state deferred compensation committee to administer the program in its behalf. Payroll reductions shall be made in each instance, by the appropriate payroll officer. The deferred compensation committee of the deferred compensation program may contract with a private corporation or institutions for providing consolidated billing and other administrative services. The deferred compensation committee shall administer the deferred compensation program based on a plan in compliance with the appropriate provisions of the Internal Revenue Code and regulations adopted under those provisions.

SECTION 3. A new section to chapter 54-52.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Deferred compensation program - Executive director - Staff - Funding. The state deferred compensation committee may appoint an executive director to assist in the administration of the program. The executive director may be the executive director of the public employees retirement system. The executive director shall be bonded by the state bonding fund in the amount required by the committee and shall perform such duties as assigned by the committee. The committee shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the program. The executive director shall hire the staff, subject to the approval of the committee. The committee may arrange for and contract with investment advisers, master trustees, and other state boards or agencies for money management services. After July 1, 1987, the expenses of the program shall be borne and payable by an assessment in an amount determined by the committee on each account currently receiving contributions.

Approved March 27, 1985

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 590

HOUSE BILL NO. 1144
(Committee on Political Subdivisions)
(At the request of the State Historical Board)

HISTORICAL SITES ON STATE OR LOCAL GOVERNMENT LAND

AN ACT to amend and reenact section 55-02-07 of the North Dakota Century Code, relating to historical, archaeological, and paleontological artifacts or sites found or located on land owned by the state or its political subdivisions and the procedures for determining significance and mitigating proposed actions affecting those artifacts or sites.

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

SECTION 1. AMENDMENT. Section 55-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-02-07. Protection of prehistoric or historic artifacts or sites. Any historical, archaeological, or paleontological artifact or site that is found or located upon any land owned by the state of North Dakota or its political subdivisions or otherwise comes into its custody or possession and which is, in the opinion of the superintendent, significant in understanding and interpreting the history and prehistory of the state, shall not be cared for, handled, protected, excavated, or stored under the direction of or in the manner prescribed by the superintendent destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board. Notification of the superintendent's opinion of significance shall be communicated to the appropriate governing official. The state historical board through the superintendent shall, within sixty days of written notification to it by the appropriate governing official of the state or political subdivision's desire, need, or intent to destroy, alter, remove, or otherwise dispose of a significant artifact or site, provide said governing official written direction for the care, protection, excavation, storage, destruction, or other disposition of said significant artifact or site. It shall be the responsibility of the state and its political subdivisions to cooperate with the state historical board in identifying and implementing any reasonable alternative to destruction or alteration of any historical, archaeological, or paleontological artifact or site significant in understanding and interpreting the history and prehistory of the state before the state historical board shall approve such demolition or alteration.

CHAPTER 591

SENATE BILL NO. 2312
(Senators Todd, Kusler, Satrom)
(Representatives Unhjem, Nalewaja, O. Solberg)

HISTORICAL IMPACT FUND

AN ACT to establish a historical impact fund for emergency historical and archaeological projects.

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

SECTION 1. Historical impact emergency fund - Administration by superintendent of state historical board - Emergency commission authorization. There is hereby created a historical impact emergency fund to be administered by the superintendent of the state historical board for the purpose of emergency mitigation of adverse effects on cultural resources and historical buildings, structures, or objects in the state. The superintendent may use the moneys in the historical impact emergency fund only after the emergency commission has authorized the proposed use and expenditure. The historical impact emergency fund may receive moneys by legislative appropriation and by gift, grant, devise, or bequest of any money or property to the fund. The fund is not subject to section 54-44.1-11 and all income and moneys derived from the investment of the fund must be credited to the fund.

Approved April 4, 1985

CHAPTER 592

HOUSE BILL NO. 1143
(Committee on Transportation)
(At the request of the Parks and Recreation Department)

MOTOR VEHICLE PERMIT FEES IN PARKS

AN ACT to amend and reenact section 55-08-06 of the North Dakota Century Code, relating to permit fees for motor vehicles in state parks, recreational areas, or reserves.

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

SECTION 1. AMENDMENT. Section 55-08-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-06. Permits for motor vehicles. No motor vehicle shall 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 shall not apply to any motor vehicles entering any state park for the purpose of parking thereon during the performance of any historic drama. Permits shall 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 shall grant permission to use any state park, state recreational area or reserve. Permits for each calendar year shall be provided and placed on sale before October first next preceding, and used on or at any time after said date until the end of the calendar year for which issued. Such permits in each category shall be numbered consecutively for each year of issue. A maximum fee of five fifteen dollars ~~shall~~ may be charged for each permit issued, except that permits of appropriate special design may be sold individually at ~~one dollar~~ a maximum of two 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 shall be deposited in the state park operating fund in the state treasury.

Approved March 27, 1985

CHAPTER 593

HOUSE BILL NO. 1267
(Representatives Wald, A. Hausauer, Hoffner)
(Senators Lips, Tallackson)

RECREATIONAL LEADERSHIP AND FACILITIES GRANTS

AN ACT to provide for the administration of recreational leadership grants and facilities grants.

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

SECTION 1. **Leadership and facilities grants.** The North Dakota parks and recreation 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 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 be used for a facilities grant program. This program shall 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.

Approved March 31, 1985

CHAPTER 594

SENATE BILL NO. 2161
(Committee on State and Federal Government)
(At the request of the State Historical Board)

STATE HISTORIC SITE REGISTRY REMOVAL

AN ACT to amend and reenact subsection 4 of section 55-10-02 of the North Dakota Century Code, relating to the state historic sites registry, additions to or deletions from that list, and the discretionary powers of the state historical board regarding that list.

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

SECTION 1. AMENDMENT. Subsection 4 of section 55-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The "state historic sites registry" shall be a listing of sites designated by the state historical board ~~of the~~ as state historical society as possessing historical value, ~~as defined in this section,~~ historic sites according to written criteria established by the board and including but not limited to sites enumerated in this chapter. Sites which have lost characteristics for which they were determined to meet the criteria may be removed from the registry by the state historical board. This registry, and any subsequent annual updates thereto, shall be published and updated annually and distributed in accordance with state law dealing with publications.

Approved March 29, 1985

CHAPTER 595

SENATE BILL NO. 2162
(Committee on State and Federal Government)
(At the request of the State Historical Board)

STATE HISTORIC SITE DEMOLITION

AN ACT to amend and reenact subsection 2 of section 55-10-08 of the North Dakota Century Code, relating to the responsibilities of the state or instrumentalities of state government regarding demolition or alteration of any site listed in the state historic sites registry and the procedure for approval or mitigation of any proposed demolition or alteration.

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

SECTION 1. AMENDMENT. Subsection 2 of section 55-10-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Neither the state nor any of the instrumentalities of government enumerated in subsection 1 shall demolish or cause to alter the physical features or historic character of any site listed in the state historic sites registry, defined in subsection 4 of section 55-10-02, as a state historic site without first obtaining the prior approval thereof from the superintendent of the state historical board upon authorization of the state historical board. It shall be the responsibility of the state or instrumentalities of government enumerated in subsection 1 to cooperate with the state historical board in identifying and implementing any reasonable alternative to demolition or alteration of any state historic site before the board approves such demolition or alteration.

Approved March 22, 1985

CHAPTER 596

HOUSE BILL NO. 1142
(Committee on State and Federal Government)
(At the request of the State Historical Board)

RECOGNITION OF FEDERAL HISTORICAL PRESERVATION LAW

AN ACT to amend and reenact section 55-10-11 of the North Dakota Century Code, relating to the federal historic preservation law and the discretionary powers of the state historical board regarding participation in the programmatic provisions of that law and supplements thereto.

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

SECTION 1. AMENDMENT. Section 55-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-10-11. ~~Acceptance~~ Recognition of federal historical preservation law. The state of North Dakota hereby ~~assents to~~ recognizes the provisions of Public Law 89-665, [16 U.S.C. 470 et seq.] approved October 15, 1966, an Act to establish a program for the preservation of additional historic properties throughout the nation, and all acts amendatory and supplementary thereto. The state historical society of North Dakota is hereby authorized, and empowered, and ~~directed to perform all such acts as may be necessary on behalf of North Dakota~~ to conduct, coordinate, and carry out the purposes and objectives of this Act of Congress ~~for and within~~ to the extent to which this Act is determined by the state historical board to be beneficial to the state of North Dakota. The state historical society ~~shall~~ may carry out a comprehensive statewide historic survey in accordance with criteria established by the secretary of the interior for the preservation, acquisition, and development of such property as provided in the Act of Congress. The society may transfer funds made available to the state to other state agencies, local governments, and to other public bodies, private organizations, and individuals for the acquisition of title or interests in, and for the development of, any district, site, building, structure, or object significant in American history, architecture, archaeology, and culture, or property used in that connection, and for its development to assure the preservation for public benefit of any historic properties, in compliance with this Act of Congress and with rules and regulations promulgated by the secretary of the interior for its administration. For these purposes, the state historical society may inspect the projects and examine the records of those projects eligible for grants and may establish necessary rules and regulations for the projects.

Approved March 14, 1985

CHAPTER 597

SENATE BILL NO. 2273
(Senator Parker)
(Representative W. Williams)

NATURE PRESERVE PROGRAM ADVISERS

AN ACT to amend and reenact sections 55-11-04, 55-11-05, and 55-11-10 of the North Dakota Century Code, relating to advisers to the state parks and recreation department on the nature preserve program and acquisition of nature preserves and natural areas.

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

SECTION 1. AMENDMENT. Section 55-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-11-04. State parks and recreation department - Advisers - Meetings. The department shall be responsible for implementing the purposes of this chapter, and shall seek the advice of and work in conjunction with the ~~directors of the state historical board, the state highway department, the state forest service, and the state game and fish department~~ advisers to the department as provided by section 55-11-10 in fulfilling the purposes of this chapter. ~~Meetings with the directors of these agencies shall be held at such regular times as the department may establish.~~

SECTION 2. AMENDMENT. Section 55-11-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-11-05. Acquisition of nature preserves and natural areas. The department is authorized and empowered, for and on behalf of the state of North Dakota, to acquire nature preserves by gift, devise, or exchange, or purchase, with prior approval of the legislative assembly or governor. The department may acquire the fee simple interest in a natural area or any one or more lesser estates, interests, and rights therein, including, without limitation upon the generality of the foregoing by reason of specification, a leasehold estate, an easement either appurtenant or in gross and either granting the state specified rights of use or denying to the grantor specified rights of use, or both.

SECTION 3. AMENDMENT. Section 55-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-11-10. Advisers to the state parks and recreation department. The ~~directors~~ superintendent of the state historical board, the state ~~highway department~~ commissioner of agriculture, the state ~~forest service~~ forester, and the state game and fish ~~department~~ commissioner shall serve as advisers to the department. Such advisers may, in the discretion of the department, attend meetings dealing with the purposes of this chapter but shall have no right to vote. ~~Nothing in this~~ This section ~~shall be construed to~~ does not prevent the department from meeting from time to time in its discretion without the participation of the advisers.

Approved April 11, 1985

TAXATION

CHAPTER 598

HOUSE BILL NO. 1657

(Strinden)

(Approved by the Committee on Delayed Bills)

HOME RULE CITY TAX COLLECTION AGREEMENTS

AN ACT to amend and reenact section 57-01-02.1 of the North Dakota Century Code, relating to tax collection agreements with home rule cities.

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

* SECTION 1. AMENDMENT. Section 57-01-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-01-02.1. Tax collection agreements with home rule cities.

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1 and the tax commissioner are hereby authorized and empowered to enter into contractual agreements whereby the tax commissioner shall have authority to collect any sales and use taxes assessed by such incorporated city.
2. It shall be the duty of the tax commissioner to deposit with the state treasurer all money collected by him under this section and to accompany each remittance with a certificate showing the city for which it was collected. The state treasurer, ~~quarterly~~ monthly, shall pay to the city auditors of the several cities the money to which they are entitled under this section.
3. The agreements entered into under this section may also provide for an agreed amount to be allowed the tax commissioner for services rendered in connection with such collections. Any sums collected for services rendered shall be paid to the state treasurer for deposit in the general fund.

Approved March 27, 1985

* NOTE: Section 57-01-02.1 was also amended by section 14 of House Bill No. 1083, chapter 152.

CHAPTER 599

SENATE BILL NO. 2294
(Wright)

RESIDENTIAL PROPERTY DEFINED

AN ACT to amend and reenact subsection 12 of section 57-02-01 of the North Dakota Century Code, relating to the definition of residential property.

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

SECTION 1. AMENDMENT. Subsection 12 of section 57-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. "Residential property" means all property, or portions of property, used by an individual or group of individuals as a dwelling, including property upon which a mobile home is located but not including hotel and motel accommodations required to be licensed under chapter 23-09 nor structures providing living accommodations for four or more separate family units nor any tract of land upon which four or more mobile homes are located.

Approved March 22, 1985

CHAPTER 600

SENATE BILL NO. 2409
(Dotzenrod, Stromme, D. Meyer)

FARM STRUCTURES PROPERTY TAX EXEMPTION

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to the exemption of farm structures from property taxes; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subsection 15 of section 57-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15. a. All farm structures, and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or structures used in connection with a retail or wholesale business other than farming, even though situated on agricultural land, shall not be exempt under this subsection.
- b. It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
 - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other

similar operations normally associated with farming and ranching, with not less than fifty percent of his annual net income.

- (2) "Farmer" means an individual who normally devotes the major portion of his time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty percent of his annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which he lives and for which the exemption is claimed.
- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
 - (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (4) For purposes of applying the income requirements of this subdivision, if a husband and wife reside together in a residence claimed as exempt under this subdivision because both or one of them is a farmer, not less than fifty percent of their combined net income from all sources must be net income from farming activities as defined in paragraph 3 in order for the residence to qualify for the exemption.
- (5) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant was, or was not, net income from farming activities; provided, that if that occupant is married and they both occupy the residence, it

shall be stated in the written statement that their net income from farming activities was, or was not, fifty percent or more of their combined net income from all sources.

- (6) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than ~~twenty~~ thirty thousand dollars during each of the three preceding calendar years. The provisions of this paragraph do not apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which he lives and for which the exemption is claimed.

SECTION 2. EFFECTIVE DATE. The provisions of this Act are effective for taxable years beginning after December 31, 1984.

Approved March 27, 1985

CHAPTER 601

HOUSE BILL NO. 1256
(Unhjem)

NEW RESIDENTIAL PROPERTY TAX EXEMPTION

AN ACT to create and enact two new subsections to section 57-02-08 of the North Dakota Century Code, providing exemptions from property taxes for new single family residential property and condominiums and townhouses which meet certain qualifications; and to provide an effective date and an expiration date.

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

SECTION 1. Two new subsections to section 57-02-08 of the North Dakota Century Code are hereby created and enacted to read as follows:

Up to seventy-five thousand dollars of the true and full value of all new single family residential property, exclusive of the land on which it is situated, shall be exempt from taxation for the two taxable years subsequent to the taxable year in which construction is begun if all of the following conditions are met:

- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution.
- b. Special assessments and taxes on the property upon which the residence is situated are not delinquent.
- c. The first owner after the builder resides on the property, or the builder still owns the property.

For purposes of this subsection "single family residential property" does not include condominium or townhouse property.

Up to seventy-five thousand dollars of the true and full value of each unit of all new condominium and townhouse

residential property, exclusive of the land on which it is situated, shall be exempt from taxation for the two taxable years subsequent to the taxable year in which construction is begun if all of the following conditions are met:

- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution.
- b. Special assessments and taxes on the property upon which the condominium or townhouse is situated are not delinquent.
- c. The first owner, after the builder, who resides in the condominium or townhouse unit still owns the property.

SECTION 2. EFFECTIVE DATE AND EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 1984, for property upon which construction is begun after March 31, 1985, and completed before January 1, 1987, and is ineffective after December 31, 1989.

Not approved or disapproved by the Governor

Filed March 15, 1985

CHAPTER 602

HOUSE BILL NO. 1600
(Schmidt)

MINERALS EXEMPT FROM PROPERTY TAXES

AN ACT to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, to provide that certain minerals are exempt from ad valorem property taxes; and to provide an effective date.

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

SECTION 1. A new subsection to section 57-02-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Minerals in place in the earth which at the time of removal from the earth are then subject to taxes imposed under chapter 57-51 or chapter 57-61.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984.

Approved March 22, 1985

CHAPTER 603

SENATE BILL NO. 2491
(Senators Tennesof, Kilander, Christensen)
(Representative A. Hausauer, Moore, Wold)

CHURCH PARKING LOT EXEMPTION

AN ACT to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the exemption from taxation of property of religious corporations or organizations; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subsection 9 of section 57-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. All real property, not exceeding two acres [.81 hectares] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of such services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether such real property consists of one tract or more. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any such property, while the same was so used for religious purposes, are void.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984.

Approved April 11, 1985

CHAPTER 604

SENATE BILL NO. 2250
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

TAXATION REVISIONS

AN ACT to amend and reenact subsection 1 of section 11-10.1-05, subsection 1 of section 57-02-08.1, sections 57-02-32, 57-02.1-01, 57-06-05, subsection 3 of section 57-12-06, subdivision c of subsection 3 of section 57-13-04, sections 57-20-01, 57-20-20, 57-23-04, 57-23-08, subsection 3 of section 57-26-03, sections 57-28-18, 57-32-01, 57-32-04, 57-32-05, 57-33-03, subsection 1 of section 57-33-04, sections 57-55-04.1, 57-60-02, subsection 3 of section 57-62-02 of the North Dakota Century Code, relating to taxation and removal of references to the personal property tax, to the year in which totally disabled persons are eligible for property tax credits, to eliminate an inconsistent definition of value for payments made by the game and fish department in lieu of property taxes, to the removal of references to sleeping car and carline companies, to the correction of an inaccurate statutory cross-reference, to the clarification of the percentage changes in assessments made by the state board of equalization, to a clarification of the date of delinquency for real property taxes, to remove references to the tax appeals board, to proceedings for the abatement of taxes, to interest due on a subsequent tax sale certificate, to references to the assessment date for property taxes, to the definition of gross receipts for the taxation of rural electric cooperatives, to the payment date of the privilege tax on coal conversion facilities, and to the method of allocation of moneys in the coal development fund; and to repeal section 57-02-23, subsection 5 of section 57-06-02, subsection 4 of section 57-06-14, subsection 13 of section 57-15-10, sections 57-23-03, 57-23.1-01, 57-23.1-02, 57-31-01, 57-31-02, and 57-31-03 of the North Dakota Century Code, relating to taxation and the removal of references to the personal property tax, to the removal of statutory references to sleeping car and carline companies, to remove references to the tax appeals board, to the proceedings for the abatement of property taxes, to tax levy limitations with respect to taxes levied for a city employees' pension plan, and to the taxation of transient stocks of merchandise.

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

SECTION 1. AMENDMENT. Subsection 1 of section 11-10.1-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The county director of tax equalization shall have the power, duty, and responsibility to call upon and confer with township and city assessors in the county and to instruct them in the preparation and proper use of land maps and property record cards, the preparation of assessment books, the changes in assessment laws and regulations, the determination of proper standards of value, the use of proper classifications of property, and the authority to require attendance at meetings, to the end that a uniform assessment of all ~~personal~~ and real property in the county will prevail.

* SECTION 2. AMENDMENT. Subsection 1 of section 57-02-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 ten thousand dollars or less per annum from all sources, including the income of any person dependent upon him, 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 his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether or not such person is the head of a family. The exemption to which any person may be entitled shall be determined according to the following schedule:
 - a. If the person's income is not in excess of five thousand five hundred 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 five thousand five hundred dollars and not in excess of six 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.

* NOTE: Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2289, chapter 605, and amended by section 1 of Senate Bill No. 2347, chapter 607, and amended by section 1 of Senate Bill No. 2466, chapter 606.

- c. If the person's income is in excess of six thousand five hundred dollars and not in excess of seven thousand five hundred 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 seven thousand five hundred dollars and not in excess of eight 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 eight thousand five hundred dollars and not in excess of ten 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 shall 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 shall not reduce the liability of any person for special assessments levied upon his 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 such income, including that of any dependent, as determined in this chapter does not exceed ten 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. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet.

SECTION 3. AMENDMENT. Section 57-02-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-32. Auditor to furnish tax list. The auditor of each county shall make and transmit to the township clerk of each civil township within such county, on the first day of March of each year, a copy of the tax list of such township for the preceding year showing the owner and description of each piece or parcel of land assessed and the valuation thereof, and a list of the valuation of personal property assessed to each person or corporation within such township.

SECTION 4. AMENDMENT. Section 57-02.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02.1-01. ~~Definitions~~ Definition. As used in this chapter, unless the context or subject matter otherwise clearly indicates-

- 1- "~~Property~~, "property subject to valuation" means real property owned by the state or real property leased or held by lease or license from the United States or a political subdivision of this state, and controlled by the state game and fish department but shall not include any land leased by such department if such land is being assessed for ad valorem taxation to the owner.
- 2- "~~Value or valuation~~" means the true and full value of the usual selling price at a private sale between a willing buyer and a willing seller at the place where the property to which the term is applied is located as assessed and equalized; ~~less the valuation of any improvements to real property and of inundated land-~~

SECTION 5. AMENDMENT. Section 57-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-06-05. Annual assessment. The state board of equalization, at its annual meeting in August, shall assess the franchises and all operative property of ~~sleeping car~~, telephone, telegraph, power, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

SECTION 6. AMENDMENT. Subsection 3 of section 57-12-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The owner of any separate piece or parcel of real estate that has been assessed may appeal the assessment thereon to the state board of equalization as provided in subdivision a of subsection ~~4~~ 3 of section 57-13-04; provided, however, that such owner has first appealed the assessment to the local equalization board of the taxing district in which the property was assessed and to the county board of equalization of the county in which the property was assessed.

SECTION 7. AMENDMENT. Subdivision c of subsection 3 of section 57-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. The percentage of reduction or increase made by the board under this subsection in any assessment shall be even a whole numbered amount and not a fractional amount.

SECTION 8. AMENDMENT. Section 57-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-01. Real and personal property taxes - When due and delinquent - Penalties. All real and personal property taxes and yearly installments of special assessment taxes shall become due on the first day of January following the year for which the taxes were levied. The first installment of real estate taxes, all personal property taxes, and yearly installments of special taxes shall become delinquent ~~on~~ after the first day of March following and, if not paid on or before said date, shall be subject to a penalty of three percent, and on May first following an additional penalty of three percent, and on July first following an additional three percent, and an additional penalty of three percent on October fifteenth following. From and after January first of the year following the year in which the taxes become due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes on personal property shall be charged until the taxes and penalties are paid, with the interest charges to be prorated to the nearest full month for a fractional year of delinquency. The second installment of real estate taxes shall become delinquent ~~on~~ after October fifteenth, and, if not paid on or before that date shall become subject to a penalty of six percent.

SECTION 9. AMENDMENT. Section 57-20-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-20. Payment of tax under protest. Any person against whom any tax is levied, or who may be required to pay the same, may pay such tax under protest to the county treasurer, by giving notice in writing to such treasurer at the time of payment, specifying the reasons for such protest, and thereafter, within sixty days, he may apply in writing to the board of county commissioners for an abatement, adjustment, or refund of taxes thus paid, or any portion thereof, and if such application is rejected, in whole or in part, or if the board fails to act upon his application within sixty days, it shall notify the applicant of the disposition of his application and of his right to appeal ~~to the tax appeals board~~ as provided by law. The application to the board of county commissioners shall show the post-office address of the taxpayer and notice to such address by registered or certified mail shall be sufficient service of the notice of rejection or approval of the taxpayer's application.

SECTION 10. AMENDMENT. Section 57-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-04. County commissioners may abate or refund taxes.

1. Upon application filed in the office of the county auditor on or before November first of the year following the year in which the tax becomes delinquent, as in this chapter provided, the board of county commissioners may abate or

refund, in whole or in part, any assessment or tax upon real property, in the following cases:

- 1- a. When an error has been made in any identifying entry or description of the property, in entering the valuation thereof, or in the extension of the tax, to the injury of the complainant.
 - 2- b. When improvements on any real property were considered or included in the valuation thereof which did not exist thereon at the time fixed by law for making the assessment.
 - 3- c. When the complainant, or the property, is exempt from the tax.
 - 4- d. When the complainant had no taxable interest in the property assessed against him at the time fixed by law for making the assessment.
 - 5- e. When taxes have been erroneously paid, or errors made in noting payment, or in issuing receipts therefor.
 - 6- f. When the same property has been assessed against the complainant more than once in the same year, and the complainant produces satisfactory evidence that the tax thereon for such year has been paid.
 - 7- g. When any building, mobile home, structure, or other improvement has been destroyed or injured by fire, flood, or tornado the abatement or refund shall be granted only for that part of the year remaining after the property was damaged or destroyed.
 - 8- h. When the assessment on the complainant's property is invalid, inequitable, or unjust.
2. An application for refund of taxes paid with respect to any part of an assessment abated under this section shall be granted, regardless of whether or not such taxes were paid under protest, oral or written.
3. Any person aggrieved by any decision of the board of county commissioners may appeal in the manner provided by law.

SECTION 11. AMENDMENT. Section 57-23-08 of the North Dakota Century Code is hereby amended and reenacted to read 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 shall be 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 shall be stated thereon and the applicant may appeal the rejection of the application for abatement or refund or compromise ~~to the tax appeals board within thirty days from the date of the mailing of the notice of rejection 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 or the tax appeals board and the same shall be credited to the county.

SECTION 12. AMENDMENT. Subsection 3 of section 57-26-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If the certificate is a subsequent tax sale certificate, by paying the amount which the person named therein paid for the same plus interest on such amount at the rate of ~~six~~ nine percent per annum. Subsequent tax sale certificates must be redeemed in the order in which they were issued.

SECTION 13. AMENDMENT. Section 57-28-18 of the North Dakota Century Code is hereby amended and reenacted to read 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 shall be made upon the same terms and conditions as a sale is authorized to be made at the November sale, except that when farmland is sold after the first of January such sale will be made subject to any existing farm lease of said land for the year in which such 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 shall 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 shall be final and the purchaser shall be 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. In case of the sale or contract for sale or redemption of tax deed land before the first of ~~April~~ February, such land shall be assessed and taxed for the current year, and the

purchaser or vendee or redemptioner shall be entitled to the rental and landlord's share of crops on such land for such year. In case of the sale or contract for purchase or redemption of tax deed land after March thirty-first, the land shall not be assessed and taxed for the current year, and the county shall retain the rental and landlord's share of the crops thereon for that year. The proceeds realized from such sale shall be apportioned in the manner in which the proceeds of the annual November sale are distributed. The proceeds realized from any rental and landlord's share of the crops shall be apportioned in the manner in which other rental proceeds are distributed under the present law.

SECTION 14. AMENDMENT. Section 57-32-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-01. Applicability of public utility laws. All of the provisions of chapter 57-06 are made applicable, insofar as the same may be consistent with the provisions of this chapter, to the assessment of ~~earline companies~~, express companies, and air transportation companies.

SECTION 15. AMENDMENT. Section 57-32-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-04. Allocation of tax. The taxes imposed by this chapter upon ~~earline companies~~ and express companies shall be collected by the state treasurer and deposited in the state general fund.

The taxes imposed by this chapter upon air transportation companies shall be deposited with the state treasurer, who shall credit the same to the air transportation fund, but within ninety days after receipt thereof, these funds shall be allocated and remitted as herein provided by the state treasurer to the cities or municipal airport authorities where such transportation companies make regularly scheduled landings. The taxes collected from each such company shall be allocated to each city or municipal airport authority where such company makes regularly scheduled landings according to the ratio that the annual gross landing weight of the company for such city or municipal airport authority bears to the total annual gross landing weight of the company for all cities or municipal airport authorities where it makes regularly scheduled landings. The annual gross landing weight of a company for a city or municipal airport authority shall be computed by (1) multiplying the certified landing weight for each plane of the company by the number of landings made by it during the preceding calendar year at the city or municipal airport authority, and (2) adding together the amount so computed for each such plane. The annual gross landing weight of a company for all cities and municipal airport authorities shall be the total of the annual gross landing weight of the company for each city or municipal airport authority in which it made regularly scheduled landings. The certified landing weight of a plane shall be the landing weight as certified by the federal aviation agency. It shall be the duty of the tax commissioner to certify to the state treasurer the names of such air transportation

companies and the amount of tax of each company that shall be allocated by the state treasurer to each city or municipal airport authority.

SECTION 16. AMENDMENT. Section 57-32-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-05. Collection of tax. If any tax required to be paid by any company under the provisions of this chapter shall not be paid on or before October first of the year following the year of delinquency, the state treasurer shall seize personal property belonging to such company found within this state, sufficient to pay the amount of such tax with penalty and interest. The state treasurer, immediately after seizing said property, shall proceed to advertise the same for sale by publishing a notice at least two times in a newspaper published in Burleigh County. Such notice shall describe the property seized, the amount of the tax and penalty for which the property has been seized, and the day and hour when and the place where said property will be sold. If the tax and penalty, with interest due thereon, shall not be paid before the time appointed for sale, which shall not be less than ten days after the first publication of such notice, the state treasurer shall proceed to sell such property, or so much thereof as may be necessary, to pay such tax, penalty, interest, and the costs of such seizure and sale, at public auction to the highest bidder.

~~If any tax required to be paid by any earline company under the provisions of this chapter shall not be paid on or before October first following delinquency, the state treasurer may collect the tax due by using the following alternative procedure-~~

~~The state treasurer shall give notice of the amount of the delinquent tax by registered mail to the chief accounting officer of any railroad company over whose line or lines in this state the cars of said delinquent have been transported, or are being transported, and which said railroad company has in its possession or under its control any credits belonging to the delinquent or owes any debts to the delinquent-~~

~~After receiving the notice the railroad company so notified shall neither transfer nor make other disposition of the credits, or debts until the state treasurer consents to a transfer or disposition or until sixty days elapse after receipt of the notice- All railroad companies so notified shall advise the state treasurer within ten days after receipt of the notice of all such credits or debts in their possession, under their control, or owing by them-~~

~~Whenever any railroad company advises the state treasurer that it has within its possession or under its control any credits belonging to the delinquent, or owes any debt to the delinquent, and the amount thereof, the state treasurer may thereupon issue a notice of distraint and have the same served upon any such railroad company- Service of said notice upon the registered agent of such railroad company within this state shall constitute valid service-~~

Any railroad company so served shall pay over to the state treasurer the sum of any credits belonging to the delinquent, or any debts owing to the delinquent, whenever such credits, or debts are less than the delinquent tax and penalty, or shall pay over to the state treasurer the amount of the delinquent tax and penalty, whenever such credits or debts are greater, and shall deduct the sum so paid over from the credits or debts due the delinquent.

SECTION 17. AMENDMENT. Section 57-33-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-33-03. Report of gross receipts. Each cooperative annually on or before May first in each year shall file a report with the tax commissioner in such form and containing such information as the tax commissioner may prescribe and demand. Such report shall state the amount of gross receipts derived from the furnishing of electric energy during the preceding calendar year. Gross receipts derived from the sale of a capital asset do not have to be reported. Each such cooperative at the same time shall file with the county auditor of each county within which any of its lines are located a report giving the length of the line or lines within each taxing district in said county and the total length of its lines within the county as of January first of that year. The county auditor may require a map to be filed, showing the length of the lines within each taxing district of said county. To facilitate the making of such maps, the county auditor shall furnish each cooperative an accurate map of the county showing the boundaries of each taxing district.

SECTION 18. AMENDMENT. Subsection 1 of section 57-33-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The tax commissioner shall levy on each cooperative a tax upon its gross receipts for the preceding calendar year. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this section. Each year for the first five years during which such cooperative is engaged in business the tax shall be one percent and thereafter the tax shall be two percent of its gross receipts. For the purpose of determining when the two percent rate shall be applied, the first year the cooperative is engaged in business shall be the first year in which the cooperative was engaged in business prior to April first of that year. The tax hereby imposed shall be in lieu of any other taxes levied on the personal property of such cooperatives.

SECTION 19. AMENDMENT. Section 57-55-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-04.1. Procedure for abatement, refund, or compromise of tax. Any person having any estate, right, title, or interest in or lien upon any mobile home which has been assessed for taxation purposes

pursuant to this chapter may apply for abatement, refund, or compromise, as the case may be, pursuant to chapter 57-23. The application shall be made in writing on the form prescribed by the tax commissioner and shall be filed in triplicate with the county auditor of the county where the mobile home was assessed within six months after the tax imposed by this chapter becomes due, or at any time during the taxable year that a mobile home qualifies under the provisions of section 57-55-10. The county auditor shall promptly serve the county director of tax equalization with one copy of the application. The abatement or compromise shall be granted by the county commissioners if the facts upon which the application is based establish that the assessment contains error, or that the value placed upon the mobile home by the county director of tax equalization was excessive, or that the mobile home is exempt from taxation pursuant to section 57-55-10. The decision of the county commissioners may be reviewed and considered by the tax appeals board pursuant to chapter 57-23-1 appealed in the manner provided by law.

* SECTION 20. AMENDMENT. Section 57-60-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-02. Imposition of taxes. There is hereby imposed upon the operator of each coal conversion facility ~~an annual~~ a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax shall be computed as follows:

1. For all coal conversion facilities, other than electrical generating plants and coal gasification plants as provided in subsections 2, 3, and 4, the tax shall be measured by the gross receipts derived from such facility for the preceding month and shall be in the amount of two and one-half percent of such gross receipts. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.
2. For electrical generating plants, the tax shall be at a rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale.
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.
4. For coal gasification plants, the tax shall be either the amount provided in subsection 1 or ten cents on each one thousand cubic feet [28,316.85 liters] of synthetic natural gas produced for the purpose of sale, whichever is greater.

* NOTE: Section 57-60-02 was also amended by section 2 of Senate Bill No. 2257, chapter 654.

SECTION 21. AMENDMENT. Subsection 3 of section 57-62-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Twenty percent shall be allocated to the coal-producing counties and shall be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such quarterly period. Allocations under subdivision a shall be apportioned by the county treasurer within fifteen days from the date the moneys are received from the state treasurer and allocations under subdivision b shall be apportioned by the state treasurer as follows:
 - a. If the tipple of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned according to this subdivision shall be allocated as follows:
 - (1) Thirty percent shall be paid by the county treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent shall be deposited by the county treasurer in the county general fund to be used for general governmental purposes.
 - (3) Thirty percent shall be apportioned by the county treasurer to school districts within the county on the average daily membership basis, as certified to him by the county superintendent of schools.
 - b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned from that coal mining operation according to this subsection shall be allocated, subject to the definitions of terms and the requirements in paragraph 4, as follows:
 - (1) Thirty percent shall be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers]

of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.

- (2) Forty percent shall be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion shall be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. It shall be the duty of the county director of tax equalization of the coal-producing county to certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.
- (3) Thirty percent shall be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen mile

[24.14 kilometer] radius of the tippie of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tippie of the currently active coal mining operation in the coal-producing county.

(4) For the purposes of this subdivision:

- (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produces more than one hundred fifty thousand tons [136,077.71 metric tons] of coal in a coal-producing county during the quarterly period.
- (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136,077.71 metric tons] of coal are mined in the quarterly period.
- (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68,038.86 metric tons] of coal are mined in the quarterly period.
- (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68,038.86 metric tons] of coal are mined in the quarterly period.
- (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a quarterly period, the state treasurer of the coal-producing county shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same quarterly period.

SECTION 22. REPEAL. Section 57-02-23, subsection 5 of section 57-06-02, subsection 4 of section 57-06-14, subsection 13 of section 57-15-10, sections 57-23-03, 57-23.1-01, 57-23.1-02, 57-31-01, 57-31-02, and 57-31-03 of the North Dakota Century Code are hereby repealed.

Approved March 31, 1985

CHAPTER 605

SENATE BILL NO. 2289
(Senators Holmberg, Ingstad, Kilander)
(Representatives Cleveland, Moore, Schneider)

SENIOR CITIZEN PROPERTY TAX CREDIT

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to property tax credits for persons sixty-five years of age or older with limited income; and to provide an effective date.

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

* SECTION 1. AMENDMENT. Section 57-02-08.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 as certified by a physician selected by the local governing body, with an income of ~~ten~~ twelve thousand dollars or less per annum from all sources, including the income of any person dependent upon him, 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 his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether or not such person is the head of a family. The exemption to which any person may be entitled shall be determined according to the following schedule:
 - a. If the person's income is not in excess of ~~five six~~ five hundred 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.

* NOTE: Section 57-02-08.1 was also amended by section 2 of Senate Bill No. 2250, chapter 604, and amended by section 1 of Senate Bill No. 2347, chapter 607, and amended by section 1 of Senate Bill No. 2466, chapter 606.

- b. If the person's income is in excess of ~~five six~~ five six thousand ~~five hundred~~ dollars and not in excess of ~~six~~ seven 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 ~~six seven~~ seven nine thousand ~~five hundred~~ 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 ~~seven nine~~ eight ten thousand five hundred dollars and not in excess of ~~eight ten~~ eight ten 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 ~~eight ten~~ ten twelve thousand five hundred dollars and not in excess of ~~ten~~ ten twelve 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 shall 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 shall not reduce the liability of any person for special assessments levied upon his 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 such income, including that of any dependent, as determined in this chapter does not exceed ~~ten~~ ten twelve 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. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet.

- 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 ~~ten~~ ten twelve thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or

other retirement benefits, and who rents living quarters shall be eligible for refund for that part of his 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 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, shall 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 his annual income, but such refund shall not be in excess of ~~one~~ two hundred ~~ninety~~ ten dollars. If the calculation for said refund is less than five dollars, a minimum of five dollars shall be sent to the qualifying applicant. In no case shall 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 shall be made to the tax commissioner before the first day of June of each year by the person claiming the refund. 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 shall this subsection apply to rents or fees paid by a person to a nursing home licensed pursuant to section 23-16-01 if that nursing home has been declared exempt from property taxation.

3. All forms necessary to effectuate this section shall be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of same 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 person dependent upon him and not compensated for by insurance or otherwise shall be deducted. For purposes of this section, the term "medical expenses" shall have the same meaning as it has for state income tax purposes.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1985.

Approved March 30, 1985

CHAPTER 606

SENATE BILL NO. 2466
(Mutch)NO HOMESTEAD CREDIT FOR SUBSIDIZED
HOUSING

AN ACT to amend and reenact subsection 2 of section 57-02-08.1 of the North Dakota Century Code, relating to the homestead credit for rent paid by persons living in government subsidized low or middle income housing; and to provide an effective date.

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

* SECTION 1. AMENDMENT. Subsection 2 of section 57-02-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 ten thousand dollars or less per annum from all sources, including the income of any person dependent upon him, 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 shall be eligible for refund for that part of his 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, shall 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 his annual income, but such refund shall not be in excess of one hundred ninety dollars. If the

* NOTE: Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2289, chapter 605, and amended by section 2 of Senate Bill No. 2250, chapter 604, and amended by section 1 of Senate Bill No. 2347, chapter 607.

calculation for said refund is less than five dollars, a minimum of five dollars shall be sent to the qualifying applicant. In no case shall 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 shall be made to the tax commissioner before the first day of June of each year by the person claiming the refund. 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 shall this subsection apply to rents or fees paid by a person to a nursing home licensed pursuant to section 23-16-01 if that nursing home has been declared exempt from property taxation.

SECTION 2. EFFECTIVE DATE. The provisions of this Act are effective for taxable years beginning after December 31, 1984.

Approved March 29, 1985

CHAPTER 607

SENATE BILL NO. 2347
(Wright)

AGED OR DISABLED RENT CREDIT DISALLOWED IN EXEMPT PROPERTY

AN ACT to amend and reenact subsection 2 of section 57-02-08.1 of the North Dakota Century Code, relating to property tax credits for a person sixty-five years of age or older, or for any person who is permanently and totally disabled, if that person rents living quarters and has an income of ten thousand dollars or less per annum.

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

* SECTION 1. AMENDMENT. Subsection 2 of section 57-02-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 ten thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, and who rents living quarters shall be eligible for refund for that part of his 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 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, shall 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 his annual income, but such refund shall not be in excess of one hundred ninety dollars. If the calculation for

* NOTE: Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2289, chapter 605, and amended by section 2 of Senate Bill No. 2250, chapter 604, and amended by section 1 of Senate Bill No. 2466, chapter 606.

said refund is less than five dollars, a minimum of five dollars shall be sent to the qualifying applicant. In no case shall 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 shall be made to the tax commissioner before the first day of June of each year by the person claiming the refund. 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 shall this subsection apply to rents or fees paid by a person ~~to~~ for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that nursing home living quarter has been declared exempt from property taxation.

Approved March 22, 1985

CHAPTER 608

SENATE BILL NO. 2384
(Moore)

FARM STRUCTURE EXEMPTION — HOMESTEAD CREDIT RELATION

AN ACT to create and enact a new subsection to section 57-02-08.1 of the North Dakota Century Code, relating to the homestead credit and farm structures exempt from taxation; and to provide an effective date.

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

SECTION 1. AMENDMENT. A new subsection to section 57-02-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

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 shall receive any property tax credit under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984.

Approved March 22, 1985

CHAPTER 609

HOUSE BILL NO. 1204
(Dotzenrod)

HOMESTEAD CREDIT PAYMENT

AN ACT to amend and reenact section 57-02-08.3 of the North Dakota Century Code, relating to state payment for the homestead credit for special assessments and the lien for payment of the homestead credit for special assessments.

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

SECTION 1. AMENDMENT. Section 57-02-08.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.3. Homestead credit for special assessments - Certification - Lien.

1. Any person who has qualified for the property tax credit provided for in section 57-02-08.1 may elect to also qualify for an additional homestead credit against that person's homestead for the portion of any special assessment levied by a city under title 40 that becomes due for the same year. The total amount of credits allowed for any one property must not exceed six thousand dollars excluding any interest charged by the body levying the special assessment. This credit shall be granted only at the election of the qualifying person. The person making the election shall do so by filing with the county auditor a claim for the special assessment credit on a form prescribed by the tax commissioner. The claim shall be filed with the county auditor on or before February first of the year in which the special assessment or installment thereof becomes payable.
2. a. By March first of each year, the county auditor of each county shall certify to the state tax commissioner, on forms prescribed by the tax commissioner, the following information:

- (1) The name and address of each person for whom the special assessment credit provided for in subsection 1 was allowed for the preceding year.
 - (2) The amount of credit allowed for the special assessment ~~or~~ installment thereof due for the preceding year.
 - (3) The total amount of the special assessment credits due in each special assessment district.
 - (4) Other information that the tax commissioner requires.
- b. The tax commissioner shall audit the certifications, make such corrections as may be required, and certify to the state treasurer for payment to each county by June first of each year the sum of the amounts computed by adding the credits allowed for portions of special assessment credits allowed assessments which were due for each homestead in the county for the preceding year. No more than the portion of special assessments due for the preceding year shall be allowed as a credit for any homestead in any year.
- c. The county treasurer upon receipt of the payment from the state treasurer shall forthwith apportion and distribute the payment to each special assessment district in the county according to the total credits allowed for each respective special assessment district.
- d. 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.
3. a. Any credit allowed under subsection 1, plus interest in the amount of nine percent per year from the time the credit is taken, shall create a lien in favor of the state against the property upon which the special assessment credit is allowed and shall remain a lien upon the property from the time the credit is allowed until the lien is fully satisfied by depositing the amount of the lien in the state general fund. If the amount of the lien exceeds the market value of the property, the state may accept the amount of the market value of the property as payment in full on the lien.
- b. (1) Except as otherwise provided in this subdivision, no transfer of title to the homestead because of sale, death, or otherwise shall be made without

the lien being satisfied. When a credit under subsection 1 is allowed, the county auditor shall cause a notice of lien of record to be filed against subject property with the register of deeds.

- (2) When a transfer occurs between spouses because of the death of one of them, the lien allowed by this section need not be satisfied until the property is again transferred.
- c. This lien shall have precedence over all other liens except general tax liens and prior special assessment liens and shall not be divested at any judicial sale. No mistake in the description of the property covered by this lien or in the name of the owner of such property shall defeat the lien if the property can be identified by the description in the special assessment list.

Approved April 15, 1985

CHAPTER 610

HOUSE BILL NO. 1094
(Murphy, R. Anderson)

TAXATION OF REAL PROPERTY IN OIL AND GAS PRODUCTION

AN ACT to amend and reenact sections 57-02-26 and 57-24-31 of the North Dakota Century Code, relating to taxable property used for oil and gas discovery, exploration, processing, or transportation being taxable to the owner of that property; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 57-02-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-26. Certain property taxable to lessee or equitable owner.

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, shall be considered, for all purposes of taxation, as the property of the person so holding the same.
2. Property held under an easement or a lease for a term of years and any improvements upon that property which are used for any purpose relating to discovery, exploration, processing, or transportation of oil or gas shall be considered the property of the lease or easement holder. For the purposes of this subsection, "improvements" does not include pipelines or property subject to the provisions of chapter 57-06 or property subject to the in lieu of ad valorem tax provisions of chapter 57-51.

SECTION 2. AMENDMENT. Section 57-24-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-24-31. Collection of real estate taxes on leasehold or other possessory interests.

1. If any holder of a leasehold or other possessory interest in exempt real property neglects or refuses to pay any real estate taxes legally assessed and levied thereon at such time as now is or may hereafter be required by law for the payment of real property taxes, such leasehold or other possessory interest shall be sold in the manner provided by law for the sale of real property for delinquent taxes. Such taxes shall also constitute a personal charge against the holder of the lease or other possessory interest from and after the day they become due, and all of the provisions of law with respect to the enforcement of collection of personal property taxes shall be applicable.
2. For property subject to assessment under the provisions of subsection 2 of section 57-02-26, taxes upon the property constitute a personal charge against the lease or easement holder from and after the day they become due, and all of the provisions of law with respect to the enforcement of collection of personal property taxes shall be applicable.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984.

Approved March 27, 1985

CHAPTER 611

SENATE BILL NO. 2443
(Senators Moore, Dotzenrod)
(Representatives A. Olson, Riehl)

AGRICULTURAL LAND CAPITALIZATION RATE

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to the capitalization rate used in the valuation and assessment of agricultural lands; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 57-02-27.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-27.2. Valuation and assessment of agricultural lands. "True and full value" of agricultural lands shall be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value shall be defined as the "capitalized average annual gross return". The "annual gross return" shall be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land. The "average annual gross return" for each county shall be determined as follows:

1. Total the annual gross returns for the most recent six years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the six.
2. Divide the figure arrived at in subsection 1 by four.

To find the "capitalized average annual gross return" for years after 1983, the average annual gross return shall be capitalized by a rate which is ~~one-half of one percentage point below~~ a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average shall be computed from the twelve years ending with the most recent year used in subsection 1, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year shall be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate shall not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4. ~~To find the "capitalized average annual gross return" for 1983, the average annual gross return shall be capitalized at seven and one-half percent. Notwithstanding the other provisions of this section, the maximum increase or decrease in the capitalization rate in any two-year period is three-tenths of one percentage point above or below the capitalization rate for the year preceding the two-year period.~~

It shall be the duty of the agricultural economics department of North Dakota state university to compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis, to compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land, for each county, and to provide the tax commissioner with this information by December first of each year. Prior to January first of each year the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

Prior to February first of each year the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. Such estimate shall be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization shall, wherever possible, use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

It shall be the duty of each local assessor to determine the relative value of each assessment parcel within his jurisdiction and to determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel shall then be assessed according to the provisions in section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment

district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change shall be provided to the county director of tax equalization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984.

Approved March 28, 1985

CHAPTER 612

SENATE BILL NO. 2345
(Dotzenrod, Moore)

POLITICAL SUBDIVISIONS LEVY LIMITATIONS

AN ACT to create and enact a new subsection to section 57-02-08 and two new sections to chapter 57-15 of the North Dakota Century Code, relating to an exemption from ad valorem taxes for certain athletic and recreational facilities and protection of property taxpayers and taxing districts and school district levy limits; and to provide an effective date.

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

SECTION 1. A new subsection to section 57-02-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Property used for athletic or recreational activities when owned by a political subdivision and leased to a nonprofit corporation organized for the purpose of promoting public athletic or recreational activities.

SECTION 2. A new section to chapter 57-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Protection of taxpayers and taxing districts. Each taxing district, with the exception of school districts, 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 under subsection 2 or 3, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts provided in this section.
2. A taxing district may elect to levy at most three percent more in 1985 than the amount levied in dollars in 1984 and may elect to levy at most three percent more in 1986 than the amount levied in dollars in 1985. The governing body of the taxing district must specifically approve by resolution the levy of the additional percentage. Before

adding the increase, the dollar amount levied in the prior year which is used as a base amount shall be:

- a. Reduced by an amount equal to the sum determined by the application of the mill levies for that taxing district to the final taxable valuation of any property which is removed from the assessment rolls of that taxing district after the prior year but was included in the assessment for the prior year.
 - b. Increased by an amount equal to the sum determined by the application of the mill levies for that taxing district to the taxable valuation of any taxable property which was not taxable in the prior year or was omitted from the assessment rolls for the prior year but which is included in the assessment for the current year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
3. A taxing district may levy an amount in dollars equal to the amount levied in the prior year reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district plus an amount equal to the sum determined by the application of any mill levies authorized by law but not levied by the governing body of the taxing district for the prior year and any mill levies specifically authorized by the electors of that taxing district but not levied for the prior year to the 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 this section to the amount levied pursuant to this subsection.
 4. 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.
 5. 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.
6. The limitation on the amount which may be levied by a taxing district pursuant to this section shall not apply to school districts.
7. The provisions of this section shall not apply to any city or county which has adopted a home rule charter unless the provisions of the charter specifically provide that state laws related to property tax levy limitations shall apply.

SECTION 3. A new section to chapter 57-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

School district levy limits. Any school district may increase its levy for the purposes listed in section 57-15-14.3 by at most three percent in 1985 from the amount levied in dollars in 1984 and three percent more in 1986 from the amount levied in dollars in 1985. In the alternative, but not in addition, any school district whose electorate has approved a specified levy for prior years and which district did not levy up to the authorized level of that specified levy, may levy the difference between the levy authorized and the amount levied the preceding year for that purpose in addition to the maximum levy allowable under section 57-15-14.

SECTION 4. EFFECTIVE DATE. Section 1 of this Act is effective for taxable years beginning after December 31, 1984, and sections 2 and 3 of this Act are effective for the taxable years beginning January 1, 1985, and January 1, 1986.

Approved April 15, 1985

CHAPTER 613

HOUSE BILL NO. 1190
(Committee on Finance and Taxation)
(At the request of the State Auditor)

MILL LEVY DATES

AN ACT to amend sections 57-15-05, 57-15-07, and 57-15-11 of the North Dakota Century Code, relating to dates for levying taxes for county, city, and park district levy requests.

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

SECTION 1. AMENDMENT. Section 57-15-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-05. County tax levy. ~~On the fourth Tuesday in July of each year, or within ten days thereafter, the board of county commissioners of each county shall levy the necessary taxes for the current year on all taxable property in the county. In levying such county taxes, the~~ The board of county commissioners, in levying county taxes, shall be limited to the amount necessary to be ~~raised for the purpose of meeting meet~~ the appropriations included in the county budget ~~of for the current ensuing~~ fiscal year, and ~~the sum necessary to provide a reserve fund as limited in this chapter provided,~~ together with a tax sufficient in amount to pay the interest on the bonded debt of the county and to provide a sinking fund to pay the principal ~~thereof~~ at maturity. The county budget shall show the complete expenditure program of the county for the ~~current ensuing~~ fiscal year, and the sources of revenue from which it is to be financed.

SECTION 2. AMENDMENT. Section 57-15-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-07. City tax levies. ~~City taxes shall be levied by the governing body of the municipality at an annual meeting on the fourth Wednesday of July of each year, or within ten days thereafter, and in any such levy the~~ The governing body, in levying city taxes, shall be limited by the amount necessary to be ~~raised to meet the~~ appropriations included in the ~~annual city budget of for the current ensuing~~ fiscal year and to provide a reserve fund as limited in this chapter, together with a tax sufficient in amount to pay the interest on the bonded debt of the municipality, and to

provide a sinking fund to pay and discharge the principal thereof at maturity.

SECTION 3. AMENDMENT. Section 57-15-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-11. Park district tax levies. Park district taxes shall be levied by the board of park commissioners at the annual budget meeting of the board on the fourth Wednesday of July of each year, or within ten days thereafter, in levying park district taxes the The board of park commissioners, in levying park district taxes, shall be limited by the amount necessary to meet the appropriations included in its annual the park district budget of for the current ensuing fiscal year, and the sum necessary to be provided as provide a reserve fund as limited in section 57-15-27 this chapter, together with a tax sufficient in amount to pay the interest on the bonded debt of the municipality and to provide a sinking fund to pay and discharge the principal thereof at maturity.

Approved February 4, 1985

CHAPTER 614

SENATE BILL NO. 2237
(Committee on Finance and Taxation)
(At the request of the State Auditor)

COUNTY CORRECTION CENTERS TAX LEVY

AN ACT to create and enact a new subsection to section 57-15-06.7 of the North Dakota Century Code, relating to a property tax levy in addition to the general fund levy for county correction centers; to amend and reenact sections 57-15-06.6 and 57-15-06.8 of the North Dakota Century Code, relating to the county correction centers levy.

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

* SECTION 1. AMENDMENT. Section 57-15-06.6 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.6. Levy authorized for regional or county ~~corrections~~ correction centers. The board of county commissioners of each county may levy an annual tax not exceeding the limitation in ~~subsection 7 of section 57-15-06-8 2 of this Act~~ section 57-15-06-8 2 of this Act for the purpose of constructing, equipping, operating, and maintaining regional or county ~~corrections~~ correction centers.

SECTION 2. A new subsection to section 57-15-06.7 of the North Dakota Century Code is hereby created and enacted to read as follows:

Counties levying a tax for regional or county correction centers according to section 57-15-06.6 may levy a tax not exceeding five mills.

** SECTION 3. AMENDMENT. Section 57-15-06.8 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.8. County tax levies and limitations not in addition to the general fund levy. The following mill levies, expressed as mills on the dollar of taxable valuation of property within the county, may be levied by counties but are not excepted from the general mill levy limitations of section 57-15-06:

* NOTE: Section 57-15-06.6 was also amended by section 136 of Senate Bill No. 2086, chapter 82.

** NOTE: Section 57-15-06.8 was also amended by section 138 of Senate Bill No. 2086, chapter 82, and amended by section 3 of House Bill No. 1413, chapter 89, and amended by section 1 of Senate Bill No. 2315, chapter 615.

1. Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding one-half of one mill.
2. Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding one-fourth of one mill.
3. Counties levying a tax in accordance with section 4-02-27.1 for a county fair association may levy a tax not exceeding one-half mill.
4. Counties levying a tax for multicounty fairs according to section 4-02-37 may levy a tax not exceeding one-half of one mill.
5. Counties levying a tax for extraordinary expenditures according to section 11-11-24 may levy a tax not exceeding three mills.
6. Counties levying a tax to establish firebreaks according to section 18-07-01 may levy a tax not exceeding five mills.
- 7- ~~Counties levying a tax for regional or county corrections centers according to section 57-15-06-6 may levy a tax not exceeding five mills-~~

Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

Approved March 22, 1985

CHAPTER 615

SENATE BILL NO. 2315
(Stenehjem, Holmberg)

EXTRAORDINARY EXPENDITURE LEVY LIMIT

AN ACT to amend and reenact subsection 5 of section 57-15-06.8 of the North Dakota Century Code, relating to county tax levy limitations for extraordinary expenditures.

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

* SECTION 1. AMENDMENT. Subsection 5 of section 57-15-06.8 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Counties levying a tax for extraordinary expenditures according to section 11-11-24 may levy a tax not exceeding ~~three~~ five mills.

Approved March 22, 1985

* NOTE: Section 57-15-06.8 was also amended by section 138 of Senate Bill No. 2086, chapter 82, and amended by section 3 of Senate Bill No. 2237, chapter 614, and amended by section 3 of House Bill No. 1413, chapter 89.

CHAPTER 616

HOUSE BILL NO. 1277
(Representative Nalewaja)
(Senator Lashkowitz)

ANIMAL SHELTER TAX LEVY

AN ACT to authorize a city tax levy for the construction, operation, and maintenance of animal shelters and to provide for sterilization of animals released for adoption by animal shelters supported by the levy; and to create and enact a new subsection to section 57-15-10 of the North Dakota Century Code, relating to a city tax levy for animal shelters which is in addition to general tax levy limitations.

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

SECTION 1. A new subsection to section 57-15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Taxes levied for construction, operation, and maintenance of animal shelters in accordance with section 2 of this Act may be levied in an amount not exceeding one-half mill.

SECTION 2. City tax levy for animal shelters. The governing body of the city, when authorized by a vote of at least sixty percent of the electors voting on the question, may levy a tax not exceeding the limitation in section 1 of this Act for the construction, operation, or maintenance of animal shelters. The proceeds of the tax must be kept in a separate fund and used exclusively for the purposes provided in this section. The levy authorized by this section may be used to defray expenses of any organization or agency incorporated under the laws of this state as a nonprofit corporation that has contracted with the governing body of the city in regard to the manner in which the funds will be expended and the services will be provided.

SECTION 3. Sterilization. No unclaimed dog or cat may be released for adoption by an animal shelter that receives funds from the levy under section 2 of this Act without being first sterilized, or without a written agreement and deposit from the adopter guaranteeing that the animal will be sterilized.

Approved March 22, 1985

CHAPTER 617

HOUSE BILL NO. 1050
(Legislative Council)
(Interim Education "A" Committee)

SCHOOL DISTRICT LEVY LIMITATIONS

AN ACT to amend and reenact section 57-15-14 of the North Dakota Century Code, relating to tax levy limitations in school districts; and to provide an effective date.

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

* SECTION 1. AMENDMENT. Section 57-15-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-14. Tax levy limitations in school districts. The aggregate amount levied each year for the purposes listed in section 57-15-14.3 by any school district, except the Fargo school district, shall not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of seventy mills on the dollar of the taxable valuation of the district, except that:

- 1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
 - a. There may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved by a majority of the electors voting upon the question at any regular or special school district election.
 - b. There shall be no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the electors voting at any regular or special election upon such question.
- 2. In any school district having a total population of less than four thousand ~~according to the last federal decennial census~~, there may be levied any specific number of mills

* NOTE: Section 57-15-14 was also amended by section 98 of House Bill No. 1059, chapter 235.

that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.

3. In any school district in which the total assessed valuation of property has increased twenty percent or more over the prior year and in which as a result of that increase the school district is entitled to less in state foundation aid payments provided in sections 15-40.1-06 through 15-40.1-08 because of the deduction required in subsection 3 of section 15-40.1-06, there may be levied any specific number of mills more in dollars than was levied in the prior year up to a general fund levy of seventy mills on the dollar of the taxable valuation of the school district. The additional levy authorized by this subsection may be levied for not more than two years because of any twenty percent or greater annual increase in assessed valuation. The total amount of revenue generated in excess of the eighteen percent increase which is otherwise permitted by this section may not exceed the amount of state aid payments lost as a result of applying the deduction provided in subsection 3 of section 15-40.1-06 to the increased assessed valuation of the school district in a one-year period.

The question of authorizing or discontinuing such specific number of mills authority or unlimited taxing authority in any school district shall be submitted to the ~~electorate~~ qualified electors at the next regular election upon resolution of the school board or upon the filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, unless such census is greater than four thousand in which case only fifteen percent of the number of persons enumerated in the school census shall be required. However, not fewer than twenty-five signatures shall be required unless the district has fewer than twenty-five qualified electors, in which case the petition shall be signed by not less than twenty-five percent of the electors of the district. In those districts with fewer than twenty-five electors, the number of electors in the district shall be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority shall not affect the tax levy in the calendar year in which the election is held. The election shall be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984. However, any school district which was entitled to less in state foundation aid payments for the 1984-85 school year as a result of an increase in total assessed valuation of property as provided in subsection 3 of section 57-15-14 may assess the additional levy authorized by that subsection.

Approved March 22, 1985

CHAPTER 618

HOUSE BILL NO. 1236
(Representatives Hoffner, O'Connell, Oban)
(Senators Kelsh, Lodoen, Olson)

SCHOOL ASBESTOS REMOVAL LEVIES

AN ACT to amend and reenact section 57-15-14.2 of the North Dakota Century Code, relating to special fund mill levies for the removal of asbestos from school buildings.

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

SECTION 1. AMENDMENT. Section 57-15-14.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-14.2. Mill levies requiring board action - Proceeds to special fund account.

1. A school board of any school district may levy an amount sufficient to cover the costs of the following:
 - a. Board and lodging for high school students as provided in section 15-34.2-06.
 - b. The teachers' retirement fund as provided in section 15-39.1-28.
 - c. Tuition for students in grades seven through twelve as provided in section 15-40.2-12.
 - d. Special education program as provided in section 15-59-08.
 - e. The establishment and maintenance of an insurance reserve fund for insurance purposes as provided in section 32-12.1-08.
 - f. A final judgment obtained against a school district.
 - g. The district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund as provided by chapter 52-09 and

to provide the district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund for contracted employees of a multidistrict special education board.

- h. The rental or leasing of buildings, property, or classroom space. Minimum state standards for health and safety applicable to school building construction shall apply to any rented or leased buildings, property, or classroom space.
 - i. Unemployment compensation benefits.
 - j. The removal of asbestos substances from school buildings and any repair, replacement, or remodeling that results from such removal.
2. A school board may levy no more than a total of ninety mills for the purposes listed in subsection 1 except that this limitation does not apply to mill levies pursuant to subdivisions a, c, and f, and j of subsection 1.
 3. All proceeds of any levy established pursuant to this section shall be placed in the school district's special fund account and may be expended to achieve the purposes for which the taxes authorized by this section are levied.

Approved March 1, 1985

CHAPTER 619

HOUSE BILL NO. 1160
(Opedahl, Laughlin)

TOWNSHIP SPECIAL ROAD FUND BALANCE

AN ACT to amend and reenact section 57-15-19.2 of the North Dakota Century Code, relating to special road funds in townships.

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

SECTION 1. AMENDMENT. Section 57-15-19.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-19.2. Township supervisors may authority to transfer funds into special road fund - Limitations - Use. The board of supervisors, at the time of the annual township meeting, upon resolution, may transfer or set aside a part or all of any funds into a special road fund, which fund shall be separate and distinct from all other funds. ~~Such~~ The special road fund shall not exceed the sum of ~~fifteen~~ thirty thousand dollars for any one congressional township. The special road fund may be expended, at the option of the board of supervisors, for the purpose of road construction, graveling, or surfacing.

Approved March 14, 1985

CHAPTER 620

SENATE BILL NO. 2264
(Senators Krauter, Wright)
(Representatives Martin, Riehl)

COUNTY EMERGENCY FUND LEVIES

AN ACT to amend and reenact section 57-15-28 of the North Dakota Century Code, relating to county emergency fund levies.

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

SECTION 1. AMENDMENT. Section 57-15-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-28. **Emergency fund - County.** The governing body of any county may levy a tax for emergency purposes not exceeding the limitation in subsection 22 of section 57-15-06.7. The emergency fund shall not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes, but shall be shown in the budget as an "emergency fund" and shall not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, shall be deposited in the emergency fund, and shall be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund shall not be used for any road construction or maintenance, except for repair of roads damaged by nature within sixty days preceding such determination to expend emergency funds, or for the purchase of road equipment. Any unexpended balance, remaining in the emergency fund at the end of any fiscal year, shall be kept in such fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, ~~shall equal~~ equals the amount produced by a levy of five mills on the taxable valuation of property in a county with a population of thirty thousand or more, or ten mills on the taxable valuation of property in a county with a population of less than thirty thousand, the levy authorized by this section shall be discontinued, and no further levy shall be made until required to replenish the emergency fund.

Approved March 22, 1985

CHAPTER 621

HOUSE BILL NO. 1214
(Representative L. Hanson)
(Senator Wright)

VOTE REQUIRED FOR SENIOR CITIZENS
PROGRAMS TAX LEVY

AN ACT to amend and reenact subsection 3 of section 57-15-56 of the North Dakota Century Code, relating to the vote required to authorize a tax levy for programs and activities for senior citizens.

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

* SECTION 1. AMENDMENT. Subsection 3 of section 57-15-56 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The levy authorized by this section shall be imposed or removed only by a vote of ~~at least sixty percent~~ a majority of the electorate of the county or city directing the governing body to do so. The governing body shall put the issue before the people 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.

Approved February 15, 1985

* NOTE: Section 57-15-56 was also amended by section 106 of House Bill No. 1059, chapter 235.

CHAPTER 622

SENATE BILL NO. 2270
(Senator Lodoen)
(Representative Stofferahn)

SCHOOL DISTRICT RESERVE FUND INCOME

AN ACT to amend and reenact section 57-19-02 of the North Dakota Century Code, relating to the disposition of investment income from school district special reserve funds.

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

SECTION 1. AMENDMENT. Section 57-19-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-19-02. Fund deposited with county treasurer. Such special reserve fund shall be deposited with the county treasurer of the county in which the school district, or the greater part of its territory, is situated, for the use and benefit of the school district, to be drawn upon as provided in this chapter, and kept by such county treasurer as a separate trust fund. Moneys in such fund may be deposited, held, or invested in the same manner as the sinking fund of the district or in the purchase of shares or securities of federal savings and loan associations or state chartered building and loan associations, within the limits of federal insurance. The county treasurer shall annually, upon a resolution of the school board, pay to the school district general fund any part or all of the investment income or interest earned by the principal amount of the school district's special reserve fund.

Approved March 22, 1985

CHAPTER 623

HOUSE BILL NO. 1315
(O. Hanson)RECOMMENDATIONS ON ABATEMENT
APPLICATIONS

AN ACT to amend and reenact section 57-23-06 of the North Dakota Century Code, relating to city and township recommendations on pending abatement applications.

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

SECTION 1. AMENDMENT. Section 57-23-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-06. Hearing on application.

1. Within ten days after receiving an application for abatement, the city auditor or the township clerk shall give the applicant a notice of a hearing to be held before the governing body of the city or township, or such other committee as it may designate, in which the assessed property is located. Said hearing shall be set for no more than sixty days after the date of the notice of hearing, and in any event, shall be held before the recommendations provided for in subsection 2 are made. The applicant may waive, in writing, the hearing before such governing body or designated committee at any time before the hearing. Any recommendations provided for in subsection 2 must be transmitted to the county auditor no more than thirty days after the date set for the hearing. The provisions of this subsection shall not apply to applications for abatement pursuant to section 57-02-08.2.
2. At the next regular meeting of the board of county commissioners following the filing of an application for abatement or, if forthcoming, at the next regular meeting of the board of county commissioners following transmittal of the recommendations of the governing body of the municipality, the applicant may appear, in person or by a representative or attorney, and may present such evidence as may bear on the application. The applicant shall furnish any additional information or evidence requested

by the board of county commissioners. The recommendations of the governing body of the municipality in which such assessed property is located shall be endorsed upon or attached to every application for an abatement or refund, and the board of county commissioners shall give consideration to such recommendations. The board of county commissioners, by a majority vote, either shall approve or reject the application, in whole or in part. If rejected, a statement of the reasons for such rejection, signed by the chairman of the board, shall be attached to the application, and a copy thereof shall be mailed by the county auditor to the applicant at the post-office address specified in the application.

Approved March 14, 1985

CHAPTER 624

SENATE BILL NO. 2286
(Olson)

TAX SALE NOTICE REQUIREMENTS

AN ACT to amend and reenact subsection 4 of section 57-27-02 of the North Dakota Century Code, relating to the county auditor giving notice of expiration of the period of redemption after a tax sale.

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

SECTION 1. AMENDMENT. Subsection 4 of section 57-27-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Duplicate copies of the notice of expiration of the period of redemption shall be prepared by the county auditor. If any mortgagee or assignee of a mortgage holding an unsatisfied mortgage on said land, as shown by the records in the office of the register of deeds, shall have requested in writing that the county auditor mail him one of said duplicate copies and shall have paid to the auditor the sum of one dollar and fifty cents as a fee for such purpose, the county auditor shall mail one of said copies of the notice to such mortgagee or assignee by registered or certified mail addressed to the mortgagee or assignee at least ninety days before the time for redemption expires. 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 the records of the register of deeds and 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. The expense of service by registered mail shall 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 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.

Approved March 29, 1985

CHAPTER 625

HOUSE BILL NO. 1496
(Representatives DeMers, Nalewaja, Sauter)
(Senators Lodoen, Lashkowitz, Reiten)

MARKETABLE TITLE OF CITY LAND ACQUIRED AT TAX SALE

AN ACT to create and enact a new section to chapter 57-28 of the North Dakota Century Code, relating to marketable title of real estate acquired by a city.

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

SECTION 1. A new section to chapter 57-28 of the North Dakota Century Code is hereby created and enacted to read as follows:

Real estate sold to city to be marketable. Where any city has purchased real estate pursuant to section 57-28-17 or 57-28-19 the city shall be deemed to have marketable record title to such 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.
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 the effective date of this section, whichever is later.

A subsequent conveyance of the property by the city shall convey title free of any claims based on any defects in the process of tax title acquisition by the county through which the city obtained title to the property. 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 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 contain the legal description of the real estate 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 the property is owned or for sale by the city shall be deemed an act of possession by the city, but shall not be required.

Approved March 27, 1985

CHAPTER 626

HOUSE BILL NO. 1619
(Shaw)

INTEREST ON LANDS PURCHASED AT TAX SALE

AN ACT to amend and reenact subsection 4 of section 57-28-15 of the North Dakota Century Code, relating to the rate of interest on land purchased at the annual county sale of land acquired by tax deed.

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

SECTION 1. AMENDMENT. Subsection 4 of section 57-28-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The original contract shall be filed with the county treasurer, who shall endorse thereon all payments made by the purchaser, and the unpaid balance shall draw interest at the rate of four percent per annum established by the board of county commissioners. The interest rate established by the board of county commissioners may not exceed twelve percent.

Approved March 22, 1985

CHAPTER 627

SENATE BILL NO. 2209
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

TOBACCO PRODUCTS TAX LAW

AN ACT to amend and reenact subsection 1 of section 57-36-07 and sections 57-36-12 and 57-36-25 of the North Dakota Century Code, relating to packaging, discounts, and penalties for the tobacco products tax; and to provide a penalty.

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

SECTION 1. AMENDMENT. Subsection 1 of section 57-36-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. All cigarettes sold in this state shall be put up in packages containing five, ~~eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred~~ or more cigarettes each.

SECTION 2. AMENDMENT. Section 57-36-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-12. Distributors may not sell stamps. No distributor or wholesale dealer shall resell to any other distributor or dealer any stamps purchased by him from the tax commissioner, and any distributor who has on hand any unused and canceled stamps at the time of discontinuing the business of selling cigarettes may return such stamps to the tax commissioner and receive ~~ninety-seven~~ ninety-five percent of the face value thereof.

SECTION 3. AMENDMENT. Section 57-36-25 of the North Dakota Century Code is hereby amended and reenacted to read 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 eleven 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 three 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 ~~remit~~ 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.

Approved March 29, 1985

CHAPTER 628

SENATE BILL NO. 2199
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

ESTATE TAX FEDERALIZATION

AN ACT to amend and reenact subsection 8 of section 57-37.1-01 and subsection 1 of section 57-37.1-13 of the North Dakota Century Code, relating to definitions for estate tax purposes and depository notices of transfer of decedent's assets.

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

SECTION 1. AMENDMENT. Subsection 8 of section 57-37.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "United States Internal Revenue Code of 1954, as amended" means the United States Internal Revenue Code of 1954 as amended through December 31, ~~1982~~ 1984.

SECTION 2. AMENDMENT. Subsection 1 of section 57-37.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any safe deposit company, trust company, corporation, bank, or other institution or person having possession, control, custody, or partial control or custody of any securities, deposits, or other assets, including shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank, or other institution, standing in the name of a resident or nonresident decedent, or belonging to or standing in the joint name of such decedent and one or more other persons, who delivers or transfers the same to the personal representative, agent, deputy, trustee, legatee, heir, surviving joint owner, or any other successor in interest of such decedent, shall give the tax commissioner notice of any amount paid that had a value in excess of five thousand dollars, and the name or names and addresses of the transferees, which notice shall be on a form ~~prescribed~~ approved by the tax commissioner. Such notice shall be filed with the tax commissioner ~~within~~ as soon as

practicable after the death of the decedent or not later than thirty days from the date of payment. If no notice is given by the transferor, as prescribed herein, the transferor shall be liable for any estate tax which is unpaid on the asset which was transferred.

Approved March 22, 1985

CHAPTER 629

HOUSE BILL NO. 1392
(Moore)

INCOME TAX FEDERALIZATION DATE

AN ACT to amend and reenact subsection 3 of section 57-38-01 of the North Dakota Century Code, relating to the federalization date for North Dakota income tax purposes; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subsection 3 of section 57-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 1954, as amended to and including March 11, 1983, and shall be effective for all taxable years beginning after December 31, 1982 1984.
 - a. As to individuals, estates, trusts, and corporations, the crude oil windfall profit tax enacted as Public Law No. 96-223 (94 Stat. 229) shall be allowable as a deduction in computing taxable income for the first taxable year only, beginning on or after January 1, 1980, provided, that the deduction for a corporation shall not exceed one million dollars.
 - b. Except that the provisions of section 168(f)(8) of the Internal Revenue Code, 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, and such adjustments

must be made before computing income subject to apportionment.

- e- b. Except that the deductions provided by the cost recovery provisions enacted as section 168 of the Internal Revenue Code, other than subsection (f)(8), cannot exceed seventy-five percent for the first taxable year beginning after December 31, 1982, and cannot exceed eighty-five percent for each of the next two taxable years beginning after December 31, 1983, for the purpose of computing North Dakota taxable income by individuals, estates, trusts, and corporations. Therefore, for the taxable year beginning after December 31, 1982, federal taxable income must be increased by twenty-five percent of any ACRS depreciation deducted in that taxable year for federal income tax purposes, and for each of the next two taxable years beginning after December 31, 1983, federal taxable income must be increased by fifteen percent of any ACRS depreciation deducted in each of the respective taxable years for federal income tax purposes. Provided, that one-half of the amount not allowed as a deduction for the taxable year beginning after December 31, 1982, may be deducted in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as a deduction for the taxable year beginning after December 31, 1983, may be deducted in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as a deduction for the taxable year beginning after December 31, 1984, may be deducted 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.
- d- c. Provided, that the depreciation adjustments allowed in subdivision c 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, shall not be treated as previously taxed income.

SECTION 2. EFFECTIVE DATE. The provisions of this Act are effective for taxable years beginning after December 31, 1984.

Approved March 22, 1985

CHAPTER 630

SENATE BILL NO. 2221
(Committee on Finance and Taxation)
(At the request of the Tax commissioner)

INCOME TAX, INCOME AVERAGING, AND PARTNERSHIP INCOME

AN ACT to amend and reenact subdivision c of subsection 1 of section 57-38-01.2, subdivision c of subsection 1 of section 57-38-01.3, sections 57-38-08 and 57-38-10, subsection 3 of section 57-38-34, section 57-38-35.1, subsections 2, 5, and 6 of section 57-38-38, subdivisions b, c, and d of subsection 1 of section 57-38-45, section 57-38-64, subsections 2, 3, and 6 of section 57-38.2-01, and section 57-38.2-03 of the North Dakota Century Code, relating to income tax; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Reduced by the amount of federal income tax liability, but not social security and self-employment taxes, as computed under chapter 1 of the Internal Revenue Code of 1954, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that such taxes are computed upon income which becomes a part of the North Dakota taxable income. However, such federal income tax liability shall be reduced by all credits thereon except credits for federal income tax withholding payments, estimates of federal income tax, and income taxes of foreign countries. 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 and when 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 shall be reported and included in North Dakota taxable

income in the year in which the tax was originally deducted.

SECTION 2. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Reduced by the amount of federal income taxes, paid or accrued as the case may be during the applicable tax year, adjusted by any federal income tax refunds, to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income. 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 shall be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.

SECTION 3. AMENDMENT. Section 57-38-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-08. Partnerships not subject to tax. Partnerships shall not be subject to tax under this chapter, but the individual members of a partnership. Persons carrying on a business as partners shall be taxable on their share of the net profits of such a partnership whether the same are distributed or not, and shall be entitled to deduct their share of any net losses suffered by the partnership.

* SECTION 4. AMENDMENT. Section 57-38-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-10. Allocation and apportionment of partnership income. The income or loss of a partnership shall be allocated and apportioned to North Dakota and outside North Dakota as the income or loss of a corporation is allocated and apportioned to the state and outside the state.

SECTION 5. AMENDMENT. Subsection 3 of section 57-38-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Returns for cooperatives, domestic international sales corporations, and foreign sales corporations, however, made on the basis of the calendar year shall be filed on or before the fifteenth day of September following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the fifteenth

* NOTE: Section 57-38-10 was also amended by section 2 of House Bill No. 1648, chapter 633.

day of the ninth month following the close of the fiscal year.

SECTION 6. AMENDMENT. Section 57-38-35.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-35.1. Minimum refunds and collections - Application of refunds.

1. No refunds shall be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars.
2. No remittance of tax need be made nor any assessment or collection of tax should be made unless the amount, is at least five dollars, including penalties and interest.
3. All refunds and credits for overpayment to any taxpayer, including excess income tax withheld or overpayment of estimated tax, may be applied to payment of taxpayer's unpaid tax, interest, or penalty or delayed until taxpayer's delinquent returns have been filed.
4. Interest of ~~eleven~~ nine 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 return was filed or after the date the tax due was fully paid, whichever comes later, to the date of the refund.
5. If the amount of tax imposed by this chapter is reduced by reason of a carryback of a net operating loss or net capital loss, the interest in this section shall not start accruing until after the close of the taxable year in which the net operating loss or net capital loss occurred.

SECTION 7. AMENDMENT. Subsections 2, 5, and 6 of section 57-38-38 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. If there is a person understates change in taxable income or federal income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or federal income tax liability stated in the return as filed, ~~the~~ any additional tax determined 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.
5. 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 person files an amended 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, even though other time periods for the assessment of tax may have expired during the thirty-day period.
- c. 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.
- 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 until one year following the filing of such return or report with the tax commissioner.
6. Where before the expiration of the time prescribed for the assessment of tax, the tax commissioner and the person consent 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 so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Provided, that if the person refuses to agree to such an extension of time or renewal thereof, the tax commissioner may issue an assessment based on the best information available.

SECTION 8. AMENDMENT. Subdivisions b, c, and d of subsection 1 of section 57-38-45 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

- b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for such payment, there shall be added to the tax interest at the rate of one percent of such tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date ~~or extended due date~~ of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
- c. If upon audit an additional tax is found to be due, there shall be added to the additional tax due interest at the rate of one percent of such additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date ~~or extended due date~~ of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
- d. If the mathematical verification of a taxpayer's return results in additional tax due, there shall be added to the additional tax interest at the rate of one percent of such additional tax due for each month or fraction of a month during which the tax remains unpaid, computed from the due date ~~or extended due date~~ of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.

SECTION 9. AMENDMENT. Section 57-38-64 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-64. Amendment of declaration. ~~An individual~~ Any person may amend a declaration of estimated income and make the adjusted payments of tax due thereon under the regulations of the tax commissioner.

SECTION 10. AMENDMENT. Subsections 2, 3, and 6 of section 57-38.2-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Average base period income" means ~~one-fourth~~ one-third of the sum of the base period incomes for the base period.
3. "Base period" means the ~~four~~ three taxable years immediately preceding the computation year.

6. "Internal Revenue Code of 1954, as amended" has the same meaning as provided in ~~subdivision a~~ of subsection 3 of section 57-38-01.

SECTION 11. AMENDMENT. Section 57-38.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38.2-03. Income averaging - Computation. If the taxpayer has averageable income for the computation year, and if the amount of such income exceeds three thousand dollars, then the tax imposed by section 57-38-29 for the computation year which is attributable to averageable income shall be ~~five~~ four times the increase in tax under such section which would result from adding twenty percent of such income to one hundred percent of average base period income.

SECTION 12. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984, except for section 6 of this Act, which is to be effective for all refunds to be paid after June 30, 1985.

Approved March 22, 1985

CHAPTER 631

SENATE BILL NO. 2356
(Lashkowitz, Redlin)

ADOPTION DEDUCTION

AN ACT to create and enact a new paragraph to subdivision d of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, to provide an adjustment to taxable income for adoption of a child; and to provide an effective date.

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

SECTION 1. A new paragraph to subdivision d of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by one thousand dollars for each child under the age of twenty-one years adopted by the taxpayer. The reduction under this paragraph may be claimed only by an adoptive parent of an adopted child and the child must qualify as a dependent of the adoptive parent for federal income tax purposes. The reduction may be claimed by only one spouse, for spouses filing separately under this chapter. The reduction provided by this paragraph may be claimed only for the taxable year in which the adoption becomes final and the reduction does not apply to the adoption of children of the taxpayers' spouse.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984.

Approved March 27, 1985

CHAPTER 632

SENATE BILL NO. 2186
(Christensen)

SPOUSES INCOME TAX RETURNS

AN ACT to amend and reenact section 57-38-01.15 and subsection 2 of section 57-38-31 of the North Dakota Century Code, relating to spouses who file separate income tax returns; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 57-38-01.15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-01.15. ~~Itemization~~ Proration and itemization of deductions and exemptions.

1. Any individual taxpayer Individual taxpayers filing a North Dakota income tax return returns pursuant to the provisions of this chapter, other than section 57-38-30.3, may itemize deductions in lieu of taking a standard the zero bracket amount deduction even though a standard the zero bracket amount deduction was used in determining federal taxable income; provided, that married persons filing separately for state income tax purposes must both either itemize or take the standard zero bracket amount deduction. This provision of law is effective for taxable years beginning on or after January 1, 1979. Itemized deductions must be apportioned between spouses in the proportion that the adjusted gross income of each bears to their combined gross income. Exemptions for themselves or their dependents are to be reported in the same way that they would have been reported in separate federal returns if separate federal returns had been filed.
2. If married persons file separate North Dakota income tax returns and one spouse elects to file pursuant to the provisions of section 57-38-30.3 and the other does not, the spouse that elects not to file pursuant to section 57-38-30.3 may either itemize or use the zero bracket amount deduction. Itemized deductions must be apportioned

between spouses in the proportion that the adjusted gross income of each bears to their combined gross income. The spouse not electing to file pursuant to section 57-38-30.3 is entitled to claim only those exemptions which pertain to that spouse.

SECTION 2. AMENDMENT. Subsection 2 of section 57-38-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A husband and wife each having separate income may include their income in a single joint return, or if they have separate income from personal or professional services or from business or property in which the other has no ownership and if they file a joint federal income tax return in which such income is reported, they may file separate returns in which the separate income of each ~~and the deductions and exemptions for themselves or their dependents are~~ is reported in the same way that they would have been required to report ~~them~~ it in separate federal returns if they had filed separate federal returns.

A husband and wife who have income from property or business in which both have an ownership interest may file a single joint return in which the income of both, along with any other income they may be required to report, is included, or they may file separate returns in the same way as provided in the preceding paragraph; provided, that the income from the property or business in which both have an ownership interest shall be allocated between them according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such property or business, pursuant to rules and regulations promulgated by the tax commissioner for the reasonable allocation thereof.

SECTION 3. EFFECTIVE DATE. The provisions of this Act are effective for taxable years beginning after December 31, 1984.

Approved April 11, 1985

CHAPTER 633

HOUSE BILL NO. 1648
(A. Hausauer)

(Approved by the Committee on Delayed Bills)

TRADE OR BUSINESS INCOME REPORTING

AN ACT to amend and reenact subdivision b of subsection 6 of section 57-38-04 and section 57-38-10 of the North Dakota Century Code, relating to applicability of the Uniform Division of Income Tax Act to and reporting of income derived for carrying on a trade or business by residents of this state; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subdivision b of subsection 6 of section 57-38-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. Income derived from carrying on a trade or business by residents of this state shall be assigned to this state without regard to where such trade or business is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.

* SECTION 2. AMENDMENT. Section 57-38-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-10. Allocation and apportionment of partnership income. The income or loss of a partnership shall be allocated and apportioned to North Dakota and outside North Dakota as the income or loss of a corporation is allocated and apportioned to the state and outside the state. Provided, however, that those partners, limited to individuals, estates, and trusts who are residents of this state, must report their entire distributive share to this state, as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision c of subsection 6 of section 57-38-04.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984.

Approved March 27, 1985

* NOTE: Section 57-38-10 was also amended by section 4 of Senate Bill No. 2221, chapter 630.

CHAPTER 634

HOUSE BILL NO. 1320
(Strinden, Mertens)

INCOME TAX RATES EXTENDED

AN ACT to amend and reenact section 6 of chapter 632 of the 1983 Session Laws of North Dakota, relating to effective dates and to make permanent the income tax rates and the repeal of the energy cost relief credit as enacted on a temporary basis by the 1983 Legislative Assembly.

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

SECTION 1. AMENDMENT. Section 6 of chapter 632 of the 1983 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION	6.	EFFECTIVE	DATE	--EXPIRATION	DATE.
Sections 2, 3, 4, and 5 of this Act		are effective for the first			
three taxable years beginning after		December 31, 1982, and			
thereafter are ineffective. The provisions		of sections 57-38-29,			
57-38-29-1, 57-38-30, and subsection 2		of section 57-38-30-3 as			
these sections existed on December 31,		1982, shall be in effect			
after the taxable years for which this		Act is effective.			

Approved March 14, 1985

CHAPTER 635

HOUSE BILL NO. 1646

(Unhjem)

(Approved by the Committee on Delayed Bills)

FEDERAL INCOME TAX LIABILITY DEFINED

AN ACT to amend and reenact subsection 5 of section 57-38-30.3 of the North Dakota Century Code, relating to the definition of "federal income tax liability" for purposes of the simplified optional method of computing income taxes; and to provide an effective date.

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

SECTION 1. AMENDMENT. Subsection 5 of section 57-38-30.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. For the purposes of this section, the term "federal income tax liability" means the individual's, estate's, or trust's federal income tax liability as computed for federal income tax purposes using tax tables or schedule TC, plus additional taxes due on federal income tax schedules or forms 4970, 4972, 5544, 5405, section 72(m)(5) penalty tax, 4625, 6251, and 5329, and before credit for contributions to candidates for public office, credit for the elderly (schedule R&RP), credit for child and dependent care expenses (form 2441), investment credit (form 3468), foreign tax credit (form 1116), work incentive credit (form 4874), jobs credit (form 5884), residential energy credit (form 5695), and before reduction for federal income tax withheld, estimated payments, earned income credit, excess Federal Insurance Contributions Act (chapter 21 of the Internal Revenue Code of 1954, as amended), and the federal Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code of 1954, as amended), taxes withheld, credit for federal taxes on special fuels and oils, and regulated investment company credits. The term does not include amounts due for self-employment tax or social security tax and railroad retirement tax on tips. For purposes of this subsection, additional taxes due on federal income tax form 6251 shall be reduced, but not below zero, by the amount of any

investment credit used to reduce the federal tax liability before calculation of the additional tax due on form 6251.

SECTION 2. EFFECTIVE DATE. The provisions of this Act are effective for taxable years beginning on or after December 31, 1984.

Approved March 29, 1985

CHAPTER 636

HOUSE BILL NO. 1500
(Sauter)

CORPORATE OFFICER TAX LIABILITY

AN ACT to create and enact section 57-38-60.1 of the North Dakota Century Code, relating to corporate officer liability for compliance with income tax laws; and to amend and reenact section 57-38-61 of the North Dakota Century Code, relating to corporate officer liability for withholding tax.

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

SECTION 1. Section 57-38-60.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-38-60.1. Corporate officer liability. If a corporation is an employer, as defined in subsection 3 of section 57-38-58, and fails for any reason to file the required returns or to pay the tax due, the chairman, president, or chief operating officer, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

* SECTION 2. AMENDMENT. Section 57-38-61 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-61. Provisions of chapter applicable. The provisions of sections 57-38-34, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-52, 57-38-53, 57-38-54, 57-38-55, 57-38-56, and 57-38-57 shall, insofar as consistent therewith, govern the administration of sections 57-38-58, 57-38-59, and 57-38-60, and 57-38-60.1. The term "employer" as used in sections 57-38-58, 57-38-59, and 57-38-60, and 57-38-60.1 shall also mean "taxpayer" as used in this chapter. In addition, the authority of the tax commissioner to prescribe rules and regulations shall include the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in the state of North Dakota.

Approved March 29, 1985

* NOTE: Section 57-38-61 was also amended by section 148 of Senate Bill No. 2086, chapter 82.

CHAPTER 637

HOUSE BILL NO. 1343
(A. Hausauer)

ESTIMATED TAX PAYMENT

AN ACT to amend and reenact section 57-38-62 of the North Dakota Century Code, relating to declaration of estimated tax; to provide an effective date; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 57-38-62 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-62. Declaration of estimated income.

1. All nonresident individual taxpayers shall, and resident individual taxpayers may, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year, containing such information as the tax commissioner may prescribe by rules and regulations, if their estimated tax due the state from all sources, including wages, salaries, bonuses, or other emoluments, not subject to withholding, can reasonably be expected to exceed one hundred dollars.
2. All corporate taxpayers shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year containing such information as the tax commissioner may prescribe by rules and regulations, if the taxpayer's estimated tax due the state from sources or business done in this state can reasonably be expected to exceed five thousand dollars.
3. The provisions of section 57-38-45 apply in case of failure to file or pay a declaration 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.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1984.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 14, 1985

CHAPTER 638

HOUSE BILL NO. 1663
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

CONTINGENT SALES TAX INCREASE

AN ACT to provide for a contingent sales and use tax increase if general fund revenue receipts fall below a specified level; and to provide an expiration date.

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

SECTION 1. Contingent sales and use tax increase.

1. The director of the office of management and budget shall consult the tax commissioner and state treasurer prior to May 10, 1986, and determine general fund revenue receipts for the period from July 1, 1985, through April 30, 1986. The director of the office of management and budget shall certify the amount of receipts so determined to the governor on or before May 15, 1986.
2. If the amount certified under subsection 1 is less than three hundred ninety-three million dollars, the rate of sales and use taxes on all items taxable under subsection 1 of section 57-39.2-02.1 or subsection 1 of section 57-40.2-02.1 shall be increased by one percentage point for the period beginning July 1, 1986, and ending March 31, 1987, unless the governor certifies to the tax commissioner on or before May 31, 1986, that a tax increase is not necessary.
3. The decision of the governor under subsection 2 that a tax increase is not necessary shall be based upon the following guidelines and considerations:
 - a. A review of the effect on projections by the office of management and budget of the state general fund balance on June 30, 1987, if the tax increase provided in this section does not become effective.

- b. Any revenue collections that will be deposited in the general fund during the remainder of the biennium, including effects on cash flow.
 - c. The effect on the economic welfare of the state and its citizens of the tax increase provided in this section.
 - d. The effect of changes in oil prices or other economic indicators on projections of general fund revenue for the remainder of the biennium.
 - e. The effect of reductions in general fund expenditures which the governor has effectuated or which the governor will effectuate for the remainder of the biennium.
4. For the purposes of administering this section, the provisions of chapters 57-39.2 and 57-40.2 concerning the imposition, collection, distribution, and administration of the sales and use taxes shall govern the taxes levied pursuant to this section.
 5. The tax commissioner is authorized to adjust administratively the bracket system contained in section 57-39.2-08.2 to reflect any change in tax rates which is caused by operation of this section.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1987, and thereafter is ineffective.

Approved April 16, 1985

CHAPTER 639

HOUSE BILL NO. 1327
(Schneider, Moore)

SALES TAX EXEMPTION REMOVED FROM CANDY AND CERTAIN BEVERAGES

AN ACT to amend and reenact sections 57-39.2-04.1 and 57-40.2-04.1 of the North Dakota Century Code, to remove the sales and use tax exemption for candy, chewing gum, carbonated beverages, powdered drink mixes, and certain soft drinks.

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

SECTION 1. AMENDMENT. Section 57-39.2-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-04.1. Sales tax exemption for food and food products. Beginning July 1, 1973, gross receipts from sales for human consumption of food and food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products ~~including candy and confectionary products, chewing gum, coffee and coffee substitutes, tea, and cocoa and cocoa products, and carbonated beverages~~ when purchased by consumers for consumption off the premises where purchased, shall be exempt from the sales tax imposed by this chapter. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

SECTION 2. AMENDMENT. Section 57-40.2-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-04.1. Use tax exemption for food and food products. Beginning July 1, 1973, gross receipts from sales for human

consumption of food and food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products **including candy and confectionary products; chewing gum**, coffee and coffee substitutes, tea, and cocoa and cocoa products, **and carbonated beverages** when purchased by consumers for consumption off the premises where purchased, shall be exempt from the use tax imposed by chapter 57-40.2. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

Approved April 15, 1985

CHAPTER 640

HOUSE BILL NO. 1374
(Representative Moore)
(Senator Adams)

MONTHLY SALES TAX COLLECTIONS

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 the due date of monthly sales and use tax returns, and payment of the tax due.

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

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The tax levied under this chapter shall be 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 shall be payable monthly on or before the twenty-second last day of the next succeeding month, except tax collected during May 1987 is payable on or before the twenty-second day of June 1987. The retailer shall pay an estimated tax of at least ninety-five percent of the tax due on a monthly basis the total tax due in the manner prescribed by the commissioner. Within thirty days after the end of each quarterly period, any retailer required to pay the tax on a monthly basis shall file a return with the commissioner showing gross receipts, tax due, the amount of tax paid for each month of the quarterly period and such other information as the commissioner requires. At the time of filing the return, the retailer shall pay any balance of tax due for the quarterly period. If such monthly payment is not made or if the return indicates or, if upon audit, it is determined that less than ninety-five percent of the tax due was paid, the retailer shall be subject to a penalty of five percent of the amount below ninety-five percent

left unpaid for each month or fraction thereof in which it remains unpaid to the date the quarterly report is due. After such time, penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due shall be those prescribed in section 57-39.2-18. If the commissioner is satisfied that the nonpayment or payment of less than ninety-five percent of the tax due was excusable, the commissioner may waive and, if paid, refund all or any part of such penalty. If the total of sales subject to such taxes 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 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 North Dakota Century Code is hereby amended and reenacted to read 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 twenty-second last day of the next succeeding month, except for taxes collected during May 1987 which are payable on or before the twenty-second day of June 1987. 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. After the quarterly return is due, 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 person may return to quarterly installments.

Approved March 22, 1985

CHAPTER 641

HOUSE BILL NO. 1300
(Schneider)

SALES TAX AUDITS

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to extensions of time to perform sales tax audits; and to amend and reenact subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to the imposition of the sales tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY 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:

Extensions of time to perform sales tax audits. 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 shall be for more than one year from the date of the extension agreement.

SECTION 2. AMENDMENT. Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is hereby amended and reenacted to read 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 and irrigation equipment used exclusively for agricultural purposes and except as otherwise expressly provided in this chapter, there is imposed a tax of four 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 and irrigation equipment used exclusively for agricultural purposes.
- b. The furnishing or service of ~~steam other than steam used for processing agricultural products, gas, or 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 playing of any machine for amusement or entertainment in response to the use of a coin.
- 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.

Approved March 14, 1985

CHAPTER 642

SENATE BILL NO. 2299
(Senator Peterson)
(Representative Nalewaja)

USE TAX IN LONG-TERM CARE FACILITIES

AN ACT to amend and reenact subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code, relating to use tax on contractors.

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

SECTION 1. AMENDMENT. Subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The tax imposed by this section shall not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.

Approved March 22, 1985

CHAPTER 643

SENATE BILL NO. 2241
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

USE TAX RECORDS

AN ACT to amend and reenact sections 57-40.2-06 and 57-40.2-09 of the North Dakota Century Code, relating to payment of use tax and records preservation for use tax purposes.

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

SECTION 1. AMENDMENT. Section 57-40.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-06. **Payment of tax.** The tax imposed by this chapter shall be paid in the following manner:

1. The tax upon tangible personal property which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the commissioner shall authorize pursuant to subsection 2 of section 57-40.2-07, shall be collected by the retailer and remitted to the commissioner as provided by section 57-40.2-07; provided, that any such retailer shall not collect the tax on any purchases made by a contractor who furnishes to the retailer a certificate which includes the contractor's license number assigned to him under the provisions of chapter 43-07 and the use tax account number assigned to him by the commissioner pursuant to section 43-07-04. Such certificate shall be in the form prescribed by the commissioner and shall be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer. ~~Any contract awarded prior to April 1, 1967, the contractor receiving the award, shall be liable only for the use tax at the rate of tax in effect on the date of the contract.~~
2. The tax, when not paid in conformity with subsection 1 of this section, shall be paid to the commissioner directly by any person storing, using, or consuming such property

within this state, pursuant to the provisions of section 57-40.2-07.

SECTION 2. AMENDMENT. Section 57-40.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-09. Records required. Each retailer required or authorized to collect the tax imposed by this chapter, and each person using in this state tangible personal property purchased shall keep such records, receipts, invoices, and other pertinent papers as the commissioner shall require and each such retailer or person shall preserve for a period of three years and three months all invoices and other records of such tangible personal property purchased for resale or for use. The commissioner, or any duly authorized agent, may examine the books, papers, records, and equipment of any person who sells tangible personal property or who is liable for such tax, and may investigate the character of the business of any such person to verify the accuracy of any return made, or if no return was made, to ascertain and determine the amount due. Any such books, papers, and records shall be made available within this state for such examination upon reasonable notice if the commissioner shall make an order to that effect.

Approved March 22, 1985

CHAPTER 644

HOUSE BILL NO. 1193
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

AIRCRAFT EXCISE TAX REFUNDS

AN ACT to create and enact two new sections to chapter 57-40.5 of the North Dakota Century Code, relating to aircraft excise tax refunds and a procedure for refunding; and to provide an appropriation.

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

SECTION 1. A new section to chapter 57-40.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

Aircraft excise tax refunds - Three-year limitation. If it appears that any aircraft excise tax paid on or after July 1, 1983, was paid in error, or for any other reason the tax was not due under the provisions of chapter 57-40.5, the tax shall be refunded to the person who paid the tax upon an application made and duly allowed in accordance with this Act, provided that the application is made within three years from the date of payment of the tax.

SECTION 2. A new section to chapter 57-40.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

Procedure for refunding. Any person entitled to a refund of aircraft excise tax, may make application for refund to the tax commissioner in the manner prescribed by the commissioner. Upon the presentation of proof satisfactory to the commissioner, the commissioner shall authorize the refund to be made from moneys appropriated for that purpose. No refund shall be authorized by the commissioner until the commissioner is fully satisfied through the production of necessary purchase agreements, tax receipts, and other documents and information that the refund is warranted. Payment of the refund shall be made by warrant after approval by the office of management and budget and approval of the voucher by the office of the budget.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund of the state treasury, not otherwise appropriated, as a standing and continuing appropriation, such sums as may be necessary to provide for aircraft excise tax refunds under this Act.

Approved January 30, 1985

CHAPTER 645

SENATE BILL NO. 2319
(Senators Olson, Lodoen)
(Representative Rydell)

EMERGENCY SERVICES COMMUNICATION

AN ACT to authorize counties or cities to impose an excise tax on telephone access lines for funding emergency services communication systems.

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

SECTION 1. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Emergency services communication system" means a 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.

SECTION 2. Authority of counties or cities to impose excise tax on telephone access lines - Procedure. The governing body of a county or city may impose an excise tax on the use of telephone access lines in accordance with the following requirements:

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 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 per month per telephone access line.

2. The question of the adoption of the excise tax must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed tax authorized under subsection 1. The tax is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the tax.
3. If the tax authorized by this section is approved by the electors, the tax may be reimposed for six years without resubmitting the question to the electors.
4. If the equipment necessary to establish an emergency service communication system is not available from a telephone company serving the county or city and would prove to be economically infeasible to install based on the surcharge in this section, the county or city may not impose the excise tax. In any geographic area, only one political subdivision may impose the excise tax.

SECTION 3. Payment of tax by telephone company subscriber. The resolution imposing a tax under section 2 of this Act must include a requirement that the telephone company collect the tax from the subscriber. In its billing statement to the subscriber, the telephone company shall state the amount of the tax separately.

SECTION 4. Tax collection procedure. A resolution adopted under section 2 of this Act must include adequate procedures for the administration and collection of the tax, including a provision for reimbursement to the telephone company for the actual costs of administration in collection of the tax. The resolution must also include a provision that the tax be paid by the telephone company within thirty days after it is collected from the subscriber.

SECTION 5. Restriction on use of tax proceeds. The county may not use the proceeds of the tax imposed under section 2 of this Act for any purpose other than establishing or operating the emergency services communication system.

Approved March 29, 1985

CHAPTER 646

SENATE BILL NO. 2296
 (Senators Heigaard, Vosper, Wenstrom)
 (Representatives Kingsbury, Stofferahn)

ALCOHOL-BLENDED FUELS TAX REDUCTION

AN ACT to amend and reenact section 57-43.1-02 of the North Dakota Century Code, relating to the tax imposed on motor vehicle fuels and a tax reduction for certain alcohol-blended fuels; and to provide that the Act is severable.

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

SECTION 1. AMENDMENT. Section 57-43.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-02. Tax imposed on motor vehicle fuels - Tax reduced for agriculturally derived certain alcohol-blended fuels.

1. Except as otherwise provided in this section, a tax of thirteen 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 an agricultural ethyl a qualifying alcohol or methanol 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. 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.

- e- 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 July 1, 1985, through June 30, 1992 1987, four eight cents per gallon [3.79 liters] less than the tax imposed under subsection 1.
 - e- 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 June 30 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.
- 3- 4. The dealer shall collect the tax imposed by this section from the consumer on all sales.
- 4- 5. 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 2. Severability. If for any reason the provision in section 57-43.1-02 requiring the alcohol to be from agriculturally derived products produced in the United States is finally held by the courts to be unconstitutional, the reduction applies to alcohol derived from agricultural products regardless of the place of production.

Approved April 5, 1985

CHAPTER 647

SENATE BILL NO. 2354
(Mutch)

FUEL DEALER LICENSE FEES

AN ACT to amend and reenact subsection 2 of section 57-43.1-14, section 57-43.1-15, subsection 11 of section 57-43.2-01, and section 57-43.2-25 of the North Dakota Century Code, relating to license fees and definitions for various taxes.

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

SECTION 1. AMENDMENT. Subsection 2 of section 57-43.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. At the time of applying for a license, the applicant shall pay to the commissioner as a license fee the sum of two ~~twenty~~ dollars. This fee must be paid into the state treasury and credited to the general fund.

SECTION 2. AMENDMENT. Section 57-43.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-15. License - Contents - Authority conferred. Upon the filing of an application for a license and payment of the fee to engage in business as a dealer in motor vehicle fuel, the commissioner shall issue to the applicant a license authorizing the applicant to engage in business in this state as a dealer, as defined in section 57-43.1-01, ~~until June thirtieth of the odd-numbered year following the date of issuance of the license,~~ unless the license is revoked ~~within that period~~ by the commissioner as provided by law.

SECTION 3. AMENDMENT. Subsection 11 of section 57-43.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. "Special fuel user" means any person receiving or purchasing special fuel ~~except that it does not include a person purchasing or receiving special fuels when such~~

~~fuel is and includes 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 ~~nor shall it~~ but does not include a special fuels dealer purchasing or receiving special fuel for resale.

SECTION 4. AMENDMENT. Section 57-43.2-25 of the North Dakota Century Code is hereby amended and reenacted to read 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 ~~ten~~ 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.

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 ~~one dollar and expires on June thirtieth of every odd-numbered year~~ 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.

Approved April 11, 1985

CHAPTER 648

HOUSE BILL NO. 1248
(Representative A. Hausauer)

SPECIAL FUELS TAXES ON COMPRESSED NATURAL GAS

AN ACT to amend and reenact subsection 9 of section 57-43.2-01 and subsection 1 of section 57-43.2-02 of the North Dakota Century Code, relating to imposition of special fuels taxes upon sales of compressed natural gas.

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

SECTION 1. AMENDMENT. Subsection 9 of section 57-43.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, all gases and liquids which meet the specifications as determined by the state laboratories department pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state laboratories department to be heating oil pursuant to the provisions of section 19-10-10, and agriculturally derived alcohol if used in a pure state or if blended with another agriculturally derived liquid, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, or antifreeze as defined by section 19-16.1-02.

SECTION 2. AMENDMENT. Subsection 1 of section 57-43.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An excise tax of thirteen 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. From July 1, 1983, through June 30, 1985, the tax imposed by this subsection on fuel consisting of a blend of diesel fuel and not less than ten percent recovered oil shall be four cents per gallon [3.79 liters] less than the nonagriculturally derived special fuel excise tax provided in this subsection. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet of compressed natural gas is equal to one gallon of other special fuel.

Approved February 15, 1985

CHAPTER 649

HOUSE BILL NO. 1345
(Hughes, A. Hausauer)

VALUATION OF RECLAIMED OIL

AN ACT to amend and reenact section 57-51-05.1 of the North Dakota Century Code, relating to the valuation of reclaimed oil for purposes of payment of the oil and gas gross production tax.

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

SECTION 1. AMENDMENT. Section 57-51-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-05.1. Reclamation of oil - Refiner to pay tax - Reports required. On all oil reclaimed from tank bottoms, pit oil, and saltwater the gross production tax shall be paid by the operator of the reclaiming plant, unless taxes have already been paid thereon. If tank bottom or pit oil material is removed from the lease by the operator of a treatment plant, the gross value of oil reclaimed from the material is the purchase price paid by the operator of the treatment plant for the material from which the oil is reclaimed. If the operator has not paid a cash price for the material, the oil reclaimed has no value at the well. Every person, firm, association, or corporation engaged in the sale, purchasing, and refining of tank bottoms, pit oil, and saltwater shall report to the commissioner, upon forms prescribed by the commissioner, information necessary to the enforcement of this section.

Approved March 14, 1985

CHAPTER 650

HOUSE BILL NO. 1361
(Moore)

COUNTY REVENUE FROM GROSS PRODUCTION TAX

AN ACT to amend and reenact subsection 2 of section 57-51-15 of the North Dakota Century Code, relating to a limitation on annual county revenue from the oil and gas gross production tax.

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

SECTION 1. AMENDMENT. Subsection 2 of section 57-51-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The first one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county shall be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The second one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county shall be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 1 above two million dollars from oil or gas produced in any county shall be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county shall be entitled pursuant to this subsection shall be limited based upon the population of the county according to the last official decennial federal census as follows:
 - a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year of the ~~1983-85~~ biennium.
 - b. Counties having a population of over three thousand but less than six thousand shall receive no more than

four million one hundred thousand dollars for each fiscal year of the 1983-85 biennium.

- c. Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year of the 1983-85 biennium.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c shall be deposited instead in the state's general fund.

Approved March 14, 1985

CHAPTER 651

HOUSE BILL NO. 1088
(Legislative Council)
(Interim Water Committee)

OIL EXTRACTION TAX DEVELOPMENT FUND ALLOCATION

AN ACT to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to the allocations of moneys in the oil extraction tax development fund.

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

SECTION 1. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund. Moneys deposited in the oil extraction tax development fund shall be apportioned quarterly by the state treasurer as follows:

1. Ten percent shall be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds, shall be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund shall be established in the state treasury and the funds therein shall be deposited and invested as are other state funds to earn the maximum amount permitted by law which income shall be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and shall be available to:
 - a. The state water commission for planning for and construction of comprehensive water supply facilities related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and

- b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
2. Ninety percent shall be allocated and credited to the state's general fund for general state purposes.

Approved March 14, 1985

CHAPTER 652

HOUSE BILL NO. 1090
(Legislative Council)
(Interim Water Committee)

WATER PROJECT FUNDING FROM RESOURCES TRUST FUND

AN ACT to provide a procedure for seeking financial assistance for the development of water-related projects from the resources trust fund and to establish criteria governing review of applications for financial assistance for water-related projects from the resources trust fund.

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

SECTION 1. Resources trust fund - Procedure for review of applications for financial assistance for water-related projects.

1. A political subdivision or rural water system seeking loans, grants, or other financial assistance by legislative appropriation from the resources trust fund for a water-related project or study must submit the proposed water-related project or study to the state water commission for review. The commission may require the political subdivision or rural water system to supply information as it considers necessary to review the request. After consideration and review of the proposed water-related project or study, the state water commission may conduct or it may require the project sponsor to conduct a preliminary study for the proposed project or study. The preliminary study must be conducted in accordance with criteria established pursuant to subsection 3.
2. Every legislative bill appropriating moneys from the resources trust fund pursuant to subsection 1 must be accompanied by a state water commission report, which must include:
 - a. A summary of the engineering feasibility study of the proposed water project.

- b. Statements concerning the proposed water project as it relates to the comprehensive state water plan of the state water commission.
 - c. The need for the proposed water project, including any alternative projects which would satisfy such need.
 - d. The availability of other sources of funding or financial assistance for such water project.
 - e. A recommendation as to whether or not the proposed water project should receive financial assistance through legislative appropriation from the resources trust fund.
 - f. Other items as deemed necessary or appropriate by the state water commission.
3. The state water commission shall adopt rules for governing the review and recommendation of proposed water projects for which financial assistance by legislative appropriation from the resources trust fund is being sought under this section.

Approved February 22, 1985

CHAPTER 653

HOUSE BILL NO. 1081
(Legislative Council)
(Interim Political Subdivisions "A" Committee)

MOBILE HOME TAX PAYMENT AND PERMITS

AN ACT to amend and reenact sections 51-07-11, 57-22-18, 57-55-01.1, 57-55-02, 57-55-03, 57-55-04, 57-55-05, 57-55-06, 57-55-07, subsection 1 of section 57-55-10, and subsection 2 of section 57-55-11 of the North Dakota Century Code, relating to the payment of mobile home taxes and to tax permits.

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

SECTION 1. AMENDMENT. Section 51-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-11. Property sold under conditional sale contract not attached, repossessed, or acquired until taxes paid. Where personal property has been sold under a conditional sale contract and such contract has been canceled or foreclosed, the owner, holder, or assignee of such contract shall not attach, repossess, or acquire by bill of sale the property sold under the contract until the taxes levied upon such property have been paid ~~fully~~ as follows:

1. For property other than mobile homes subject to tax under chapter 57-55, all taxes levied upon the property must be paid in full.
2. For mobile homes subject to tax under chapter 57-55, the tax levied upon the property for the current year and the most recent preceding year must be paid in full.

SECTION 2. AMENDMENT. Section 57-22-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-22-18. Conditional sales - Taxes payable before change of possession. If personal property has been sold or transferred under a conditional sale contract, the owner, holder, or assignee of such contract shall not attach nor repossess such property nor acquire it by bill of sale, on account of the cancellation or foreclosure of such contract, until the taxes levied upon the said property have been paid ~~in full~~ as follows:

1. For property other than mobile homes subject to tax under chapter 57-55, all taxes levied upon the property must be paid in full.
2. For mobile homes subject to tax under chapter 57-55, the tax levied upon the property for the current year and the most recent preceding year must be paid in full.

SECTION 3. AMENDMENT. Section 57-55-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-01.1. Taxation of mobile homes. The owner of each mobile home shall file an application for a mobile home tax ~~deed~~ permit with the director of tax equalization in the county in which the mobile home is located on or before January tenth of each year or within ten days after ~~such~~ the mobile home is purchased or first moved into this state. Upon payment of the tax to the county treasurer, a mobile home tax ~~deed~~ permit shall be issued to the owner of the mobile home. The tax ~~deed~~ shall be permit is valid in ~~any county of this~~ throughout the state for ~~such~~ the mobile home during the period for which it was issued.

SECTION 4. AMENDMENT. Section 57-55-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-02. Application for taxing - Form - Contents. No mobile home tax ~~deed~~ permit shall be issued unless the owner files an application with the director of tax equalization and pays the tax and any penalties in full to the county treasurer. Application shall be made on forms prescribed by the state tax commissioner, furnished by the county director of tax equalization, and shall contain the necessary information to carry out the provisions of this chapter.

SECTION 5. AMENDMENT. Section 57-55-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-03. When taxes become due and delinquent - Penalty.

1. The tax imposed in this chapter shall become due and payable on January tenth of each year or ten days after such mobile home is purchased or first moved into this state. If the tax due for the entire year is paid in full ~~on or before~~ by February fifteenth, the county treasurer shall allow a five percent discount. A ~~five percent discount shall also be allowed by the county treasurer if~~ if a mobile home is purchased or moved into this state after January tenth ~~of each year~~ and if the tax imposed ~~thereon~~ by this chapter is paid in full within ten days after ~~it~~ the mobile home is purchased or moved into this state, the county treasurer shall allow a five percent discount.

2. The tax imposed by this chapter may be payable paid in two equal installments if the amount of the tax due is forty dollars or more. The first installment shall become is due on January tenth and shall become becomes delinquent on the first day of March following first and, if not paid on or before said date, shall be is then subject to a penalty of two percent, and on April first following, an additional penalty at the rate of two percent, and on May first following, an additional penalty of two percent, and an additional penalty of two percent on June first following an additional penalty of two percent. The second installment shall become is due on or before June first and shall become is delinquent on the first day of July following first and, if the second installment is not paid on or before that date, it shall be is then subject to a penalty of two percent, and on August first following, an additional penalty of two percent, and on September first following, an additional penalty of two percent, and on October first following, an additional penalty of two percent. If any tax remains due after the January first following of the next year, interest shall be charged is due at the monthly rate of one-half percent of the tax due for each month or fraction thereof of a month until the aforesaid tax and penalty has penalties have been paid in full.

SECTION 6. AMENDMENT. Section 57-55-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-04. Taxes - How determined - Disbursement. The director of tax equalization shall determine the tax for each mobile home shall be determined by the director of tax equalization by placing an evaluation on such the mobile home based upon its assessed value and by adjusting the valuation of the mobile home by the percentage provided in section 57-02-27 to determine its taxable valuation pursuant to under standards and guides as determined by the state tax commissioner and applying such that evaluation to the preceding year's total mill levies applying to property within the taxing district wherein in which the mobile home is located. If a mobile home is acquired or moved into this state during the calendar year, and a tax deed permit has not been previously issued on for such mobile home in this state for such year, the tax shall be is determined by computing the remaining number of months of the current year to the nearest full month and multiplying such that number by one-twelfth of the amount which would be due for the full year. The taxes collected pursuant to the provisions of under this chapter shall must be disbursed in the same year they are collected and in the same manner as real estate taxes for the preceding year are disbursed.

SECTION 7. AMENDMENT. Section 57-55-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-05. Taxes in lieu of other property taxes. The taxes provided for in this chapter shall be in lieu of all property taxes upon such mobile homes for the calendar year for which the tax ~~decal~~ permit is valid. However, such taxes shall in no way be construed as exempting any mobile home owner from the requirements of registering such mobile home with the registrar of motor vehicles or securing license plates entitling such mobile home to be hauled upon the state's highways pursuant to section 39-18-03.

SECTION 8. AMENDMENT. Section 57-55-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-06. Tax ~~decals~~ permits - Form --~~Display~~. The tax ~~decal~~ shall permit must be ~~decal type~~ and of a size and design specified by the state tax commissioner. The director of tax equalization shall order sufficient ~~decals~~ permits for ~~his~~ the county, and the costs of such ~~decals~~ permits must be paid by the county. The tax ~~decal~~ shall be attached to the mobile home in a conspicuous place where it is visible from the nearest street or common driveway-

SECTION 9. AMENDMENT. Section 57-55-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-07. Failure to make application or to display decal apply for permit - Illegal use of decal permit - Penalty. Any person who fails to make application pursuant to the provisions of this chapter, or who shall use or allow to be used a tax ~~decal~~ permit of any mobile home taxed pursuant to the provisions of this chapter for any purpose other than the purpose for which it was issued, ~~or who fails to attach such decal pursuant to the provisions of this chapter,~~ shall be is guilty of a class B misdemeanor.

SECTION 10. AMENDMENT. Subsection 1 of section 57-55-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A mobile home described in this subsection to the extent herein limited is exempt from taxation under this chapter; provided, that the mobile home shall have ~~displayed on it~~ a tax ~~decal~~ permit as provided in section 57-55-06:
 - a. If it is owned and used as living quarters of a military person on active military duty in this state who is a resident of another state.
 - b. If it is owned and occupied by a welfare recipient, provided the mobile home is not permanently attached to the land and classified as real property. For the purposes of this subdivision, "welfare recipient" means any person who is certified to the county director of tax equalization by the county social service board as receiving the major portion of income from any state or federal public assistance program.

- c. If it is owned and used as living quarters by a disabled veteran or unremarried surviving spouse who meets the requirements of subsection 20 of section 57-02-08.
- d. If it is owned and used as the living quarters for a blind person who meets the requirements of subsection 22 of section 57-02-08.
- e. If it is owned and used by a person who uses it as living quarters and who qualifies for the homestead credit provided in section 57-02-08.1, and the mobile home shall be regarded for the purposes of this exemption as the homestead of the person claiming the exemption.

SECTION 11. AMENDMENT. Subsection 2 of section 57-55-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 2. Before a mobile home is moved from its existing location, the owner must have a current year's mobile home ~~decal displayed thereon or must display on the mobile home during transport permit~~ or a tax release statement obtained from the county director of tax equalization indicating that all taxes, penalties, and interest levied against the mobile home have been paid. While the mobile home is being transported, a permit must be displayed on the mobile home or the owner must provide the mover with a current tax release statement. A violation of this provision shall constitute an infraction, but the minimum penalty shall be one hundred dollars.

Approved April 11, 1985

CHAPTER 654

SENATE BILL NO. 2257
(Lips)GROSS RECEIPTS OF COAL GASIFICATION
FACILITIES

AN ACT to amend and reenact subsection 4 of section 57-60-01 and subsection 4 of section 57-60-02 of the North Dakota Century Code, relating to the definition of "gross receipts" for purposes of the privilege tax on coal conversion facilities, and to the rate of tax on coal conversion facilities.

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

SECTION 1. AMENDMENT. Subsection 4 of section 57-60-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, but not including any revenue derived from transportation, transmission, distribution, or other items which occur after the process of production of the products of such facility is completed. For the purpose of computing the tax imposed by this chapter "gross receipts" does not include any financial assistance, whether in the form of price guarantee payments or otherwise, provided by the federal government or any agency of the federal government.

* SECTION 2. AMENDMENT. Subsection 4 of section 57-60-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. For coal gasification plants constructed prior to July 1, 1985, the tax shall be either the amount provided in subsection 1 or ~~ten~~ fifteen cents on each one thousand cubic feet [28,316.85 liters] of synthetic natural gas produced for the purpose of sale, whichever is greater.

Approved April 11, 1985

* NOTE: Section 57-60-02 was also amended by section 20 of Senate Bill No. 2250, chapter 604.

CHAPTER 655

HOUSE BILL NO. 1574
(Representatives Goetz, Martinson, Hoffner)
(Senators W. Meyer, Wright, Moore)

COAL CONVERSION TAX RATES

AN ACT to create and enact two new subsections to section 57-60-02 of the North Dakota Century Code, relating to the annual tax for the privilege of producing products and a temporary partial exemption and county optional temporary exemption from the tax for each coal conversion facility which commences construction after July 1, 1985.

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

SECTION 1. Two new subsections to section 57-60-02 of the North Dakota Century Code are hereby created and enacted to read as follows:

For coal gasification plants constructed after July 1, 1985, the tax shall be either the amount provided in subsection 1 or ten cents on each one thousand cubic feet [28,316.85 liters] of synthetic natural gas produced for the purpose of sale, whichever is greater.

- a. For all coal conversion facilities, other than electrical generating plants, which commence construction after July 1, 1985, the production from the facilities shall be exempt from sixty-five percent of the tax imposed by this section for a period of five years from the date of first production from the facility. The operator of each facility shall certify to the tax commissioner the date of first production of the facility.
- b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete exemption from the remaining thirty-five percent of tax imposed by this section for a period not exceeding five years from the date of the first production from the

facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection shall be allocated entirely to the county for allocation as provided in section 57-60-15.

Approved April 16, 1985

CHAPTER 656

SENATE BILL NO. 2449
(Senators Maixner, Parker, Kusler)
(Representatives Watne, Whalen)

SEVERANCE TAX REDUCTION FOR COGENERATION

AN ACT to create and enact section 57-61-01.3 of the North Dakota Century Code, relating to a severance tax reduction on coal mined for certain users.

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

SECTION 1. Section 57-61-01.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-61-01.3. Severance tax reduction for coal mined for certain users. The rate of severance tax determined and imposed as provided in section 57-61-01 shall be reduced by fifty percent if the coal is to be burned in a cogeneration facility which is designed to use renewable resources as fuel to generate ten percent or more of its energy output measured in British thermal units. The coal mine owner or operator must certify, or require the person purchasing the coal to certify, that the coal will be used in the manner required by this section to qualify for the reduced tax rate.

Approved March 28, 1985

CHAPTER 657

HOUSE BILL NO. 1470
(Representatives A. Hausauer, A. Olson, Nowatzki)
(Senators Thane, Nelson, Dotzenrod)

COAL SEVERANCE TAX EXEMPTION FOR AGRICULTURAL PROCESSING

AN ACT to create and enact a new section to chapter 57-61 of the North Dakota Century Code, relating to an exemption from the state coal severance tax and sales and use taxes for coal used by agricultural processing or sugar beet refining plants.

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

SECTION 1. A new section to chapter 57-61 of the North Dakota Century Code is hereby created and enacted to read as follows:

Severance and sales and use tax exemption for coal used in certain plants. No state severance tax may be imposed on coal used in agricultural processing or sugar beet refining plants located within North Dakota or adjacent states. The coal mine owner or operator shall require the person purchasing the coal to certify that amount of coal purchased for agricultural processing or sugar beet refining purposes. Coal exempted from the severance tax by this section is not subject to sales and use taxes.

Approved March 14, 1985

CHAPTER 658

HOUSE BILL NO. 1649
(Representatives R. Anderson, Hughes, Opedahl)
(Senators Bakewell, D. Meyer)
(Approved by the Committee on Delayed Bills)

OIL AND GAS IMPACT LOANS FROM COAL IMPACT FUND

AN ACT to amend and reenact subsection 2 of section 57-62-02 and section 57-62-03 of the North Dakota Century Code, relating to loans to oil and gas development impacted counties, cities, and school districts through the coal development trust fund; and to provide an expiration date.

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

SECTION 1. AMENDMENT. Subsection 2 of section 57-62-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Fifteen percent shall 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, chapter 626, 1979 Session Laws shall also be deposited in the trust fund created pursuant to this subsection. The fund shall be held in trust and administered by the board of university and school lands for loans to coal and oil and gas development impacted counties, cities, and school districts as provided in section 57-62-03. The board of university and school lands shall have full authority to 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 be used first to replace uncollectible loans made from the fund and the balance shall be deposited in the state's general fund. Loan principal payments shall be redeposited in the trust fund. Such trust fund shall be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter.

* SECTION 2. AMENDMENT. Section 57-62-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-03. Loans - Terms and conditions - Repayment. The board of university and school lands is authorized to make loans to coal and oil and gas development impacted counties, cities, and school districts from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. The amount which is available for loans to oil and gas development impacted counties, cities, and school districts may not exceed fifty percent of the unloaned balance of the coal development trust fund on January 1, 1985. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the energy development impact office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants shall bear interest at a rate not to exceed six percent. The warrants executed as evidence of loans to mitigate coal development impact shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor shall such loans be considered as indebtedness of the county, city, or school district. Warrants executed as evidence of loans to mitigate oil and gas development impact are payable from any funds of the borrowing political subdivision and constitute a general obligation and indebtedness of the political subdivision. The terms of ~~the~~ a loan to mitigate coal development impact shall provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter shall be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The terms of a loan to mitigate oil and gas development impact shall provide for repayment of the loan from any moneys available to the political subdivision. The amount withheld by the state treasurer as which constitutes payment of interest shall be deposited in the general fund and the amount withheld by the state treasurer as which constitutes payment of principal shall be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district shall have all of the qualities and incidents of negotiable paper, and shall not be subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal shall be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys under this chapter to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the

* NOTE: Section 57-62-03 was also amended by section 1 of House Bill No. 1087, chapter 659.

county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district shall be obligated to repay the loan from such allocation. A loan made to mitigate oil and gas development impact shall not be canceled for any reason. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1987, and after that date is ineffective.

Approved March 27, 1985

CHAPTER 659

HOUSE BILL NO. 1087
(Legislative Council)
(Interim Tenneco Plant Committee)

COAL IMPACT LOANS BEFORE MINING

AN ACT to amend and reenact section 57-62-03 of the North Dakota Century Code, relating to coal development impact loans to impacted areas from the coal development trust fund.

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

* SECTION 1. AMENDMENT. Section 57-62-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-03. Loans - Terms and conditions - Repayment. The board of university and school lands is authorized to make loans to coal development impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the energy development impact office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants shall bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor shall such loans be considered as indebtedness of the county, city, or school district. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan shall provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter shall be withheld by the state treasurer to repay the principal of the warrants and the interest

* NOTE: Section 57-62-03 was also amended by section 2 of House Bill No. 1649, chapter 658.

thereon. The amount withheld by the state treasurer as payment of interest shall be deposited in the general fund and the amount withheld by the state treasurer as payment of principal shall be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district shall have all of the qualities and incidents of negotiable paper, and shall not be subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal shall be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district shall be obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

Approved March 22, 1985

TOWNSHIPS

CHAPTER 660

HOUSE BILL NO. 1352
(W. Williams)

HOURS OF TOWNSHIP MEETINGS

AN ACT to amend and reenact sections 58-04-05 and 58-06-05 of the North Dakota Century Code, relating to the hours for township annual or special meetings and meetings of township boards of supervisors.

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

* SECTION 1. AMENDMENT. Section 58-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-04-05. Organization of annual or special meetings. The qualified electors present on the day of the annual or special meeting shall be called to order by the township clerk, or, if he is not present, the voters qualified electors may elect by acclamation one of their number to act as chairman for the purpose of calling the meeting to order and to act as clerk after the selection of a moderator. The voters qualified electors shall elect by acclamation three of their number as judges, and such judges shall be sworn and shall act as the judges of the qualifications of ~~township~~ the qualified electors of the township. The qualified electors shall proceed to choose one of their number to preside as moderator of the meeting. The clerk of the township, if present, or in his absence, the clerk of the meeting, shall keep full minutes of its proceedings in which he shall enter at length every order, direction, rule, and regulation made by the meeting. Meeting and voting hours of an annual or special meeting shall be optional with the township board ~~from one p.m. to five p.m. or from seven p.m. to ten p.m.~~, provided proper notice is given under the provisions of this chapter. ~~However, for a meeting beginning at one p.m., the township board, either upon its own resolution, or upon receipt of a petition signed by twenty percent of the township voters who voted in the last township election, shall extend the meeting and voting hours to eight p.m.~~ The positions of moderator, clerk, and the three judges shall be separate and distinct positions and no such positions shall be held by the same person. The moderator, clerk, and the three judges each shall be entitled to a salary of eight dollars per day for each day actually expended in the performance of their duties. Such salary shall be paid out of township funds made available for such purpose.

* NOTE: Section 58-04-05 was also amended by section 117 of House Bill No. 1059, chapter 235.

However, in those townships in which the offices of township clerk and treasurer have been merged, the person holding such office shall receive compensation as provided by law as township treasurer only, and shall not receive additional compensation for his duties as clerk.

SECTION 2. AMENDMENT. Section 58-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-06-05. Where meetings of board of supervisors held. The regular meetings of the board of township supervisors shall be held at the office of the township clerk or at the usual place for holding the annual township meetings if there is one. ~~It shall meet not later than ten a.m. and shall not adjourn before four p.m.~~

Approved March 27, 1985

WAREHOUSING AND DEPOSITS

CHAPTER 661

HOUSE BILL NO. 1202
(Committee on Agriculture)
(At the request of the Public Service Commission)

PUBLIC GRAIN WAREHOUSE OPERATION

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to a lien in favor of receipt holders of a public grain warehouseman; and to amend and reenact sections 60-02-01, 60-02-07, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-19.1, 60-02-23, 60-02-25, 60-02-37, 60-02-40, and 60-02-41 of the North Dakota Century Code, relating to the licensing, bonding, and operation of public grain warehouses.

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

SECTION 1. AMENDMENT. Section 60-02-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, and includes but is not limited to these contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts and which contains the notice provided in subsection 7 of section 60-02-19.1. Where a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain

or grass seed. "Grain" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.

4- 5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility in which grain is received ~~from the public~~ for storing, buying, selling, or shipping for compensation. Provided, however, that nothing in this ~~subsection~~ chapter shall be construed to require ~~any person operating a flour, cereal, or feed mill, a warehouseman~~ doing manufacturing business only, to receive, store, or purchase any kind of grain at said mill.

5- 6. "Public warehouseman" means the person operating a public warehouse which is located or doing business within this state, whether such owner or operator resides within this state or not.

6- 7. "Receipts" means grain warehouse receipts, scale tickets, checks or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except where such memoranda was received as a result of a credit-sale contract.

SECTION 2. AMENDMENT. Section 60-02-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-07. Public warehouse license - How obtained - Fee. A license must be obtained through the commission ~~to expire on the first day of August of each year~~ for each public warehouse in operation in this state. No license so issued shall describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described therein. The annual license fee which must accompany the application for a public warehouse shall be one hundred dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, two hundred dollars for a warehouse of a bushel capacity of two hundred thousand and one to and including five hundred thousand [7047.83 to and including 17619.54 cubic meters], and two hundred fifty dollars for a warehouse of a bushel capacity of five hundred thousand and one [17619.57 cubic meters] or more. The fees collected under this section shall be paid into the state treasury and credited to the general fund of the state. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and where but one set of

books and records is kept for all such warehouses, and scale tickets, warehouse receipts, checks, and credit-sale contracts of but one series are issued for the grain stored and purchased therein, only one license shall be required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee shall be based upon the combined bushel capacity of said warehouses.

SECTION 3. AMENDMENT. Section 60-02-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-09. Bond filed by public warehouseman. Before any license is issued to any public warehouseman under this chapter, the applicant for such license shall file a bond with the commission which shall:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation. On or before July thirty-first of each year, the surety shall file a verification certificate with the commission stipulating that the bond coverage continues in full effect.
3. Run to the state of North Dakota ~~and~~ for the benefit of all persons storing or selling grain in such warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose ~~and benefit~~ of:
 - a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the commission in the administration of chapter ~~69-04~~ 60-04 in the event of the licensee's insolvency.
 - c. ~~Protecting persons dealing with the licensee within the state of North Dakota from loss or damage by reason of any violation of this chapter.~~

7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. In no event shall the aggregate liability of the surety under a bond accumulate for each successive annual license renewal period during which such bond is in force but, for losses during any annual license renewal period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as it shall, in its discretion, deem necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, such cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only ~~need~~ shall be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, or corporation, and such bond shall be construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount for each.

SECTION 4. AMENDMENT. Section 60-02-09.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-09.1. Bond cancellation - Release of surety. The surety on a bond shall be released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commission of notice of cancellation by the surety, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the ninety-day period. Unless the warehouseman shall, ~~on or before the expiration of the ninety-day period,~~ file a new bond within sixty days of receipt of the notice of cancellation, the commission, without hearing, shall immediately suspend the warehouseman's license and the suspension shall not be removed until a new bond has been filed and approved by the commission. When a license is so suspended the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder 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. AMENDMENT.** Section 60-02-10.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-10.1. Revocation and suspension. The commission may suspend or revoke the license of any warehouseman for cause upon notice and

*** NOTE:** Section 60-02-10.1 was also amended by section 81 of Senate Bill No. 2079, chapter 317.

hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman shall automatically be suspended for failure at any time to have or to maintain either a bond or policy of insurance in the amount and type required. During a suspension of a license the warehouseman may, upon the commission's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping or processing.

SECTION 6. AMENDMENT. Section 60-02-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-11. Scale ticket - Contents. Every public warehouseman upon receiving grain into its warehouse, shall issue a uniform scale ticket for each load of grain received. Such tickets shall be numbered consecutively, and ~~provision shall be made for at least one copy of each ticket.~~ One copy of each ticket shall be retained and remain as a permanent record. The original ticket shall be delivered to the person from whom the grain is received, upon receipt of each load of grain. All scale tickets shall be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within twenty days after the grain is delivered to the warehouse.

SECTION 7. AMENDMENT. Section 60-02-19.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-19.1. Credit-sale contracts. A warehouseman shall not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The warehouseman shall maintain an accurate record of all credit-sale contract numbers including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract, ~~which must not exceed twelve months from the date the contract is executed.~~
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section

60-02-09, however, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.

The credit-sale contract shall state in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09; provided, however, that if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the license of the warehouseman is transferred to another licensed warehouseman, credit-sale contracts may be assigned to the transferee.

SECTION 8. AMENDMENT. Section 60-02-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-23. Records to be kept by public warehouseman. Every public warehouseman shall keep a record of all grain received, stored, and shipped, stating the:

1. Weight;
2. Grade;
3. Dockage for dirt or other causes;
4. Name of owner;
5. Price paid; and
6. Storage charge collected.

Any warehouseman whose principal office or headquarters is located outside the state of North Dakota shall make available, if requested, all books, documents, and records relevant to the North Dakota warehouse for inspection during ordinary business hours at any of its warehouses located in the state of North Dakota or other mutually acceptable place.

SECTION 9. AMENDMENT. Section 60-02-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-25. Bailment not a sale. Whenever any grain shall be delivered to any public warehouse and an unconverted scale ticket or a warehouse receipt is issued therefor, such delivery shall be a bailment and not a sale of the grain so delivered. In no case shall the grain so delivered be liable to seizure upon process of any court in any action against such bailee, except in an action by an owner of such unconverted scale ticket or warehouse receipt to enforce the terms thereof or obtain redelivery of such delivered grain. In the event of the failure or insolvency of the warehouseman, all the grain in the warehouse, whether the same is stored or not, first shall be applied at all times to the satisfaction of receipts issued by the warehouseman.

SECTION 10. A new section to chapter 60-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Receipt holder's lien. Grain contained in a warehouse, including grain owned by the warehouseman, is subject to a first priority lien in favor of outstanding receipt holders storing, selling, or depositing grain in the warehouse. The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouseman regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed in order to perfect the lien. The lien created by this section is discharged as to grain sold by the warehouseman to a buyer in the ordinary course of business. Such sale does not discharge the lien in favor of an individual receipt holder in the remaining grain in the warehouse.

SECTION 11. AMENDMENT. Section 60-02-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-37. Destruction of warehouse - Duty to notify commission. In case of the destruction by fire or other cause of any licensed public warehouse, the licensee thereof shall notify the commission by telegraph or telephone and registered or certified mail within twenty-four hours after such loss.

SECTION 12. AMENDMENT. Section 60-02-40 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-40. Transfer of warehouse - Redemption of receipts. Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the commission first of its intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain ~~during the term of the license~~, together with a statement of:
 - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
 - b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receipt holders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receipt holders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred, such warehouse receipts to be filed with the commission until called for by the owner.
5. Surrender to the commission its license for cancellation and at such time the proposed lessee or purchaser shall apply in due form for a new license and tender a new bond for approval by the commission, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commission may issue a new license ~~for the unexpired portion of the license period~~ to the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized or permitted by the commission except where made in accordance with the provisions of this section.

SECTION 13. AMENDMENT. Section 60-02-41 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-41. Going out of business - Redemption of receipts. When a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, such warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder

of such receipts, upon due notice, must accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license ~~on its expiration~~ or whose warehouse license is revoked shall notify the commission and all outstanding receipt holders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall be settled in cash and priced on the market on the day of closing.

Approved March 29, 1985

CHAPTER 662

HOUSE BILL NO. 1469
(Representatives Kent, Belter)
(Senators Tweten, Nelson)

DRY EDIBLE BEAN DELIVERY

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to delivery of dry edible beans.

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

SECTION 1. A new section to chapter 60-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Delivery of dry edible beans to warehouse receipt holder. Dry edible beans delivered by a public warehouseman to a warehouse receipt holder must be delivered dry and processed to acceptable standards for canning and packaging use. The receipt holder may choose to receive beans either bagged or in bulk. The receipt holder shall furnish the bag for beans to be bagged. The receipt holder may request grading of the beans. The warehouseman may determine grade by United States department of agriculture standards, northharvest standards, or Michigan bean shippers association standards. The receipt holder shall pay any grading fees.

Approved March 14, 1985

CHAPTER 663

SENATE BILL NO. 2133
(Committee on Agriculture)
(At the request of the Public Service Commission)

COMPLAINTS AGAINST ROVING GRAIN AND HAY BUYERS

AN ACT to amend and reenact sections 60-03-01 and 60-03-09.1 of the North Dakota Century Code, relating to definitions regarding roving grain and hay buyers and the procedure for complaints filed against roving grain and hay buyers.

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

SECTION 1. AMENDMENT. Section 60-03-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a contract for the sale of grain pursuant to which the sale price is to be paid or may be paid after the delivery or release of the grain for sale, and includes but is not limited to these contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts. Where a part of the sale price of a contract for the sale of grain is to be paid or may be paid after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain or grass seed.
4. "Roving grain or hay buyer" means any person, other than a public warehouseman, who buys grain or hay from the owner for resale or markets grain or hay on behalf of the owner. "Roving grain or hay buyer" does not include a person

buying grain or hay from a licensed warehouse in this state, nor shall it include any producer of grain or hay who purchases grain or hay from other producers to complete a carload or truckload in which the greater portion of the load is grain or hay grown by the producer.

SECTION 2. AMENDMENT. Section 60-03-09.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-09.1. **Complaint procedure.** Any person claiming to be injured or damaged by a breach of the conditions of a bond given by a licensee under the provisions of this chapter, or by the default of the licensee in the payment for any grain or hay purchased or marketed by the licensee, may file a complaint with the commission within six months from the date of the breach or the default. After a hearing, held upon notice to the licensee and the bonding company, the commission shall be empowered to order the licensee or the bonding company, or both, to pay to the complainant for any loss or damage suffered by reason of the breach of the conditions of the bond or the default in payment with interest at the weighted average base rate charged by the Bank of North Dakota since the date of the breach or default and to pay the costs incurred by the commission in the administration of this chapter. Where it appears to the commission that more than one person may have been damaged by reason of breach of the conditions of the bond or default in payment, the commission may require that all such damaged persons submit their claims to the commission within sixty days of notice in such manner as the commission deems appropriate. Failure to submit a claim within the specified time may bar the damaged person from participating in the bond proceeds. If more than one person has been damaged, and the bond is insufficient to pay the entire liability, the proceeds from the bond shall be ordered to be apportioned among the damaged persons. Upon recovery for the breach or default, or so much thereof as possible or as shall be necessary to pay all claims and costs incurred by the commission in the administration of this chapter, the commission has the power to exonerate the person so paying from further liability growing out of the breach or default.

Approved February 6, 1985

CHAPTER 664

SENATE BILL NO. 2132
(Committee on Agriculture)
(At the request of the Public Service Commission)

INSOLVENT GRAIN WAREHOUSEMAN SURETY JOINDER

AN ACT to create and enact a new section to chapter 60-04 of the North Dakota Century Code, relating to the joinder of the surety in a grain warehouseman insolvency proceeding; and to amend and reenact sections 60-04-01, 60-04-04, and 60-04-09 of the North Dakota Century Code, relating to insolvent grain warehousemen and the insolvency proceedings for insolvent grain warehousemen.

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

SECTION 1. AMENDMENT. Section 60-04-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, and includes but is not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts and which contains the notice provided in subsection 7 of section 60-02-19.1. Where a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain or grass seed. "Grain" as defined in this chapter does

not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

4. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility in which grain is received ~~from the public~~ for storing, buying, selling, or shipping for compensation. ~~Provided, however, that nothing in this subsection may be construed to require chapter requires~~ any ~~person operating a flour, cereal, or feed mill,~~ warehouseman doing manufacturing business only, to receive, store, or purchase any kind of grain at said mill.
5. "Public warehouseman" means the person owning or operating a public warehouse which is located or doing business within this state, whether such owner or operator resides within this state or not.
6. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except where such memoranda was received as a result of a credit-sale contract.

SECTION 2. A new section to chapter 60-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Joinder of surety - Deposit of proceeds. The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. Where it appears in the best interests of the receipt holders, the court may order the surety to deposit the penal sum of the bond, or so much thereof as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

SECTION 3. AMENDMENT. Section 60-04-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-04. Notice to receipt holders. Upon its appointment by the district court, the commission shall seek may take possession of all the relevant books and records of the warehouseman. The commission shall also seek the delivery to it of all receipts shown to be outstanding by the books of the warehouseman for the purpose of enforcing the provisions of this chapter. If the commission cannot ascertain the names and addresses of all of the receipt holders, or if it is unable to procure the possession of all the receipts, or

has reason to believe that all the receipts have not been surrendered to it, the commission shall publish a notice in a legal newspaper in the county in which the warehouse is situated for three successive weeks requiring the receipt holders to surrender their receipts. Unless within sixty days after the last publication of the notice the receipts are surrendered to the commission, the holders of any unsurrendered receipts shall be barred from participation in the trust fund. The commission shall cause a notice of its appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts as shown by the warehouseman's records. The notices must require outstanding receipt holders to file their claims against the warehouseman with the commission along with the receipts or such other evidence of the claims as required by the commission. If an outstanding receipt holder fails to submit a claim within forty-five days after the last publication of the notice or such longer time as prescribed by the commission, the commission is relieved of further duty or action under this chapter on behalf of the receipt holder and the receipt holder may be barred from participation in the trust fund. Outstanding receipt holders are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 4. AMENDMENT. Section 60-04-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-09. Report of trustee to court - Approval - Distribution. Upon recovery of the trust fund described in this chapter, or so much thereof as possible or as shall be necessary to redeem all outstanding receipts with interest and pay the costs incurred in the administration of this chapter, the commission shall file its report in court showing the amount payable upon each receipt after recognizing. Upon the receipt and evaluation of claims filed with it, the commission shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges thereon.
2. Assignments thereof.
3. Deductions therefrom by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount thereof, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date of the insolvency, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.

In the event that the fund shall prove insufficient to redeem all receipts in full, the same shall be prorated among them in such manner as the trustee shall deem fair and equitable. Thereupon, the court shall cite such receipt holders, upon such notice by mail as it shall prescribe, to appear upon a day fixed in the notice and show cause why the report should not be approved and distribution of the fund made as outlined therein. Upon such hearing, the court shall approve or modify the report and issue an order directing the distribution of the fund and the discharge of the commission from its trust. The report must also contain a proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of this chapter, to claimants as their interests are determined. If the trust fund is insufficient to redeem all claims in full, the fund must be shown prorated in the report in the manner the commission deems fair and equitable.

The court shall set a time and place for hearing upon such notice as it prescribes, for interested persons to show cause why the commission's report should not be approved and distribution of the fund be made as outlined therein. Copies of the report and notice of hearing must be served by the commission by registered mail upon the warehouseman and the surety on the bond and by ordinary mail upon all persons having claims filed with the commission.

Any aggrieved person having an objection to the commission's report shall set forth such objection fully and in writing, file it with the court, and serve copies upon the commission, the warehouseman, and the surety on the bond no later than ten days prior to the date of the hearing. Failure to file such objection in the time specified may be deemed as a waiver of the objection by the court.

Following hearing, the court shall approve or modify the report and issue an order directing payment by the surety company of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

Approved March 22, 1985

WATERS

CHAPTER 665

HOUSE BILL NO. 1639
(Representatives Strinden, Mertens)
(Senators Nething, Heigaard)

WETLANDS IMPORTANCE

AN ACT to provide a statement of legislative intent relating to wetlands; to provide for a conditional property tax exemption for wetlands, for payment to counties by the state of the amount of tax exempted, and an authorization for receipt of funds; to amend and reenact sections 61-16.1-41, 61-31-01, and 61-31-10 of the North Dakota Century Code, relating to drainage permits, declaration of legislative intent concerning wetlands, and receipt of funds for the waterbank program; to provide a standing and continuing appropriation; and to provide an effective date.

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

SECTION 1. Declaration of intent. The legislative assembly recognizes the importance of wetlands in North Dakota as a natural resource of state, national, and international significance. The legislative assembly also recognizes the importance of agriculture and water development in North Dakota, and that each of these activities has an interrelationship and an impact on wetlands. Therefore, the legislative assembly declares that a long-term, comprehensive policy is needed concerning North Dakota's wetlands.

The legislative assembly recognizes that between two and three million acres of wetlands remain in North Dakota, and that North Dakota produces from two and one-half million to six million ducks each year, depending on the wet and dry cycle. The legislative assembly further recognizes that wetlands can moderate the extremes in water flow and have value as natural flood-control mechanisms. The legislative assembly recognizes that wetlands can aid in water purification by trapping, filtering, and storing sediment and pollutants and by recycling nutrients. The legislative assembly recognizes that some wetlands may serve as ground water recharge areas. The legislative assembly recognizes that wetlands function as nursery areas for numerous aquatic animal species and are habitat for a wide variety of plant and animal species.

The legislative assembly also finds that the thirty-two million acres of North Dakota's prairie pothole region north and east of the Missouri River is intensively farmed, and that agriculture is the largest and most important industry in North Dakota. The legislative assembly recognizes that many wetlands, if drained, could be used as prime cropland for the production of food and fiber.

The legislative assembly further finds that the protection, development, and management of North Dakota's water resources is essential for the long-term public health, safety, general welfare, and economic security of North Dakota and its citizens.

The legislative assembly also finds that the United States fish and wildlife service holds easements to prevent the draining, burning, or filling of wetlands covering four million eight hundred thousand acres of land in North Dakota, within which farmers have been paid to preserve seven hundred sixty thousand acres of wetlands; that the United States has easements for an additional sixty-six thousand acres in North Dakota which are a part of national wildlife refuges; and that the United States also owns in fee an additional four hundred thirty thousand acres of land in North Dakota for wetland and waterfowl habitat preservation. The legislative assembly finds that payments in lieu of taxes to counties in which the United States fish and wildlife service owns land in fee seldom make up for the loss in the payments caused by removing these lands from the tax base.

The legislative assembly finds that information upon which to make decisions concerning wetlands is lacking. The legislative assembly finds that a long-term plan must be developed concerning the number of wetlands which exist in North Dakota, the number of wetlands under federal or state government ownership, the location of North Dakota's remaining wetlands, the number of wetlands which should be preserved in public or private ownership in North Dakota, the manner in which wetlands should be preserved if it is determined that additional wetlands need to be preserved, the number of waterfowl that North Dakota produces each year, the agricultural benefits that are foreclosed if wetlands are not drained, the cost to farmers of not draining their wetlands, the tax loss to counties resulting from federal fee ownership of wetlands, the impact of wetlands on water resource development in North Dakota, and other related issues.

It is hereby declared to be the policy of this state that a long-term policy and plan must be developed for wetlands and waterfowl production in North Dakota. The legislative assembly further declares that if study reveals that additional wetlands in North Dakota should be preserved and that enhanced management and development of wetland and waterfowl habitat in North Dakota are desirable, that the legislative assembly should mandate preservation, management, and development of wetland and waterfowl habitat, and develop additional programs to preserve and develop wetland habitat, and provide adequate funding of such programs.

SECTION 2. 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 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, and that the landowner has filed the required agreement. The amount of the wetlands exemption shall 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.

SECTION 3. Wetlands tax exemption payment - Certification. Prior to March 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 2 of this Act 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 2 of this Act 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 each year thereafter, the sum of property taxes due on property exempt under section 2 of this Act 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.

SECTION 4. Authorization for receipt of funds. The state treasurer shall be 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 funds must be credited to the fund for this program. The state game and fish commissioner, 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 2 and 3 of this Act.

SECTION 5. AMENDMENT. Section 61-16.1-41 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-41. Permit to drain waters required - Penalty. Any person, before draining water from a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application shall 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 pond, slough, or lake for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to him for final approval. A permit shall not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will not flood or adversely affect downstream lands. In addition, consideration shall be given to the state water resources policy set forth in section 61-01-26. If the investigation shows

that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board shall not issue a permit until flowage easements are obtained. Such flowage easements shall 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. The provisions of this section shall not be construed to 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.

Any person draining, or causing to be drained, water of a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, shall be liable for all damage sustained by any person caused by such draining, and shall be guilty of an infraction. When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.37 hectares] may be drained without first securing a permit.

SECTION 6. AMENDMENT. Section 61-31-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-31-01. ~~Declaration of intent--~~ Rulemaking authority. The legislative assembly finds that it is in the public interest to preserve certain wetlands of the state and thereby to conserve surface waters, to reduce runoff, to provide for floodwater retention, to reduce stream sedimentation, to contribute to improved subsurface moisture and replenishment of aquifers, to enhance habitat for resident wildlife, to enhance the natural beauty of the landscape, and to promote comprehensive and total water management planning. Therefore, the The commissioner of agriculture is authorized to adopt rules, pursuant to chapter 28-32, to implement this chapter, including rules setting out the procedures and payment rates designed to effectuate the terms of this chapter and the allocation of funds to those areas deemed most appropriate by the commissioner. This program is intended to supplement and complement the federal waterbank program and the payment rates established shall be at least comparable to federal rates.

SECTION 7. AMENDMENT. Section 61-31-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-31-10. Authorization for receipt of funds - Continuing appropriation. The commissioner shall be authorized to receive funds, ~~not exceeding one million dollars in aggregate total,~~ for this program from any private or public source, and shall also be 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, game and fish commissioner, 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 this chapter. All funds received from any source, not including state revenues, are hereby appropriated to the commissioner, and may be expended for the purpose of implementing this chapter upon approval of the emergency commission.

SECTION 8. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for taxable years beginning after December 31, 1986, and section 5 of this Act becomes effective on July 1, 1987.

Approved March 27, 1985

CHAPTER 666

SENATE BILL NO. 2499
(Senators Kilander, Tallackson)
(Representative Kloubec)

RED RIVER CAPACITY INCREASE

AN ACT to provide for investigation of benefits of increasing the capacity of the lower Red River.

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

SECTION 1. Increasing the capacity of the lower Red River. The state water commission and the state engineer are hereby authorized to investigate the potential flood control benefits that would accrue to North Dakota landowners through increasing the channel capacity of the lower Red River through modification, alteration, maintenance, or construction in the channel area of the Red River of the North from Grand Forks to the Canadian border. The state water commission is hereby authorized to consult and negotiate with the state of Minnesota in addressing mutually beneficial activities that would facilitate the movement of spring flood flows in the Red River from the United States. The state water commission is hereby authorized to prepare plans for submission to the Fiftieth Legislative Assembly that would address projects to improve the carrying capacity of the lower Red River.

Approved March 28, 1985

CHAPTER 667

SENATE BILL NO. 2228
(Committee on Natural Resources)
(At the request of the Water Commission)

STATE ENGINEER TESTIMONY FEES

AN ACT to create and enact a new subsection to section 61-03-05 of the North Dakota Century Code, relating to the fees of the state engineer.

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

SECTION 1. A new subsection to section 61-03-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For testifying personally in civil litigation involving private parties, or through the engineer's employees, in response to a subpoena in a case which the engineer is not a party, the actual cost incurred, including mileage and travel expenses reimbursement, equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

Approved March 31, 1985

CHAPTER 668

HOUSE BILL NO. 1635
(Schmidt)

EXPLORATION WELLS NOT WATER WELLS

AN ACT to create and enact a new section to chapter 61-03 of the North Dakota Century Code, to prohibit the use of exploration wells as water wells; and to provide a penalty.

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

* SECTION 1. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prohibition on converting mineral wells to water wells. In order to protect the public's health, safety, and welfare and to protect this state's ground water supplies, and except for purposes related to chapters 38-08 and 38-08.1, no well that has been drilled for the purpose of the exploration or production of oil or gas may be converted to a water well. Any person who converts an exploration or production well to a water well shall be guilty of a class A misdemeanor and shall be required to close the well in accordance with state standards and bear all costs associated with the closure.

Approved March 29, 1985

* NOTE: This section has been codified as a new section to North Dakota Century Code chapter 61-01.

CHAPTER 669

SENATE BILL NO. 2194
(Committee on Natural Resources)
(At the request of the Water Commission)

UNSAFE WATERWORKS

AN ACT to create and enact two new sections to chapter 61-03 of the North Dakota Century Code, relating to inspection and removal of unsafe water works; and to amend and reenact section 61-16.1-38 of the North Dakota Century Code, relating to the state engineer's authority over unsafe or unauthorized works.

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

SECTION 1. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Removal 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 post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance, the modifications necessary for compliance, and shall 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 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 shall 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 state engineer shall set a hearing date within fifteen days from the date the demand is received. 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 the works. Any assessments levied under the provisions of this section shall 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.

For purposes of this section the term "works" includes dams, dikes, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

SECTION 2. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inspection by state engineer. Whenever the state engineer is authorized or mandated by law to inspect or investigate an alleged violation of a statute under title 61, the state engineer shall have the authority to enter upon land for the purposes of conducting such an inspection or investigation. Except in emergency situations as determined by the state engineer, the state engineer shall request written permission from the landowner to enter the property. If the landowner refuses to give written permission, or fails to respond within five days of the request, the state engineer may request the district court of the district containing the property for an order authorizing the state engineer to enter the property to inspect or investigate the alleged violation.

SECTION 3. AMENDMENT. Section 61-16.1-38 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15,418.52 cubic meters] of water shall be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, shall be presented first to the state engineer. After receipt, the state engineer shall consider the application in such detail as he deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete his initial review of the application; and ~~if he approves it,~~ shall forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications

ef to the state engineer, and if the same shall meet. If the application meets with the board's approval, the board shall forward the approved application to the applicant, and shall send a certification of its action to the state engineer. The state engineer shall make the final decision on the application and forward his decision to the applicant and the local water resource board. Any person constructing a dam, dike, or other device, which is capable of retaining twelve and one-half acre-feet [15,418.52 cubic meters] of water, without first securing a permit to do so, as required by this section, shall be liable for all damages proximately caused by such dam, dike, or other device, and shall be guilty of a class B misdemeanor.

Approved March 27, 1985

CHAPTER 670

SENATE BILL NO. 2266
(Senators Lodeon, Nething, Nelson)
(Representatives Hughes, Moore)

WATER RIGHTS AND FORFEITURE

AN ACT to amend and reenact sections 61-04-06.2, 61-04-23, 61-04-24, and 61-04-25 of the North Dakota Century Code, relating to terms of permits for use of water and forfeiture of water rights.

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

SECTION 1. AMENDMENT. Section 61-04-06.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-06.2. Terms of permit. The state engineer may issue a conditional permit for less than the amount of water requested, but in no case may he issue a permit for more water than can be beneficially used for the purposes stated in the application except that water permits for incorporated municipalities may contain water in excess of present needs if based upon reasonable projections of future water needs of the municipality. He may require modification of the plans and specifications for the appropriation. He may issue a permit subject to fees for water use, terms, conditions, restrictions, limitations, and termination dates he considers necessary to protect the rights of others, and the public interest. Conditions and limitations so attached shall be related to matters within the jurisdiction of the state engineer; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

SECTION 2. AMENDMENT. Section 61-04-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-23. Forfeiture of water rights - Inspection of works. Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in his permit or ceases to use it for the beneficial use cited in his permit for three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a

justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare such water permit or right forfeited; provided, however, that any such water permit or right held by a state agency, department, board, commission, or institution may be declared forfeited only by the North Dakota legislative assembly. For purposes of this chapter, an incorporated municipality has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right, and all ditches and other works constructed or partially constructed thereunder.

*** SECTION 3. AMENDMENT.** Section 61-04-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-24. Forfeiture of water rights - Notice - Contents. If it shall appear that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality. Any holder of a water permit using water from a common source of supply, any applicant therefor or any interested party may request the state engineer to conduct such a hearing, the purpose of which shall be the cancellation of any unused water rights to such common source of supply. Any decision of the state engineer in denying a request for such a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by such appropriation or works to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, such notice shall contain:

1. A description of the water appropriation.
2. The permit number upon the records of the commission.
3. The date of priority.
4. The point of diversion.

* NOTE: Section 61-04-24 was also amended by section 1 of Senate Bill No. 2198, chapter 671.

5. A description of the lands benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permitholder, the owners of land benefited by such appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why such appropriation, or a portion thereof, should not be canceled.

The notice shall be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the register of deeds. In addition, such notice shall be published in a newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

SECTION 4. AMENDMENT. Section 61-04-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-25. Forfeiture of water rights - Hearing - Appeal. At such hearing the verified report of the state engineer or engineers of the state water commission shall be prima facie evidence for the forfeiture and cancellation of such water permit or portion thereof. If no one appears at the hearing, such water permit or portion thereof shall be declared forfeited and canceled. If interested parties shall appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that such water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, shall be declared forfeited and canceled. For purposes of this chapter, an incorporated municipality has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

Approved March 30, 1985

CHAPTER 671

SENATE BILL NO. 2198
(Committee on Natural Resources)
(At the request of the Water Commission)

WATER RIGHTS FORFEITURE

AN ACT to amend and reenact section 61-04-24 of the North Dakota Century Code, relating to the forfeiture of water rights.

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

* SECTION 1. AMENDMENT. Section 61-04-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-24. Forfeiture of water rights - Notice - Contents. If it shall appear that any water appropriation or portion thereof has not been used for a beneficial use, or having been so used at one time has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. Any holder of a water permit using water from a common source of supply, any applicant therefor or any interested party may request the state engineer to conduct such a hearing, the purpose of which shall be the cancellation of any unused water rights to such common source of supply. Any decision of the state engineer in denying a request for such a hearing may be appealed in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the permitholder and upon the owners of land benefited by such appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice shall be given to the governing body of the city, to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, such notice shall contain:

1. A description of the water appropriation.
2. The permit number upon the records of the commission.

* NOTE: Section 61-04-24 was also amended by section 3 of Senate Bill No. 2266, chapter 670.

3. The date of priority.
4. The point of diversion.
5. A description of the lands benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission.
6. Notice that the permitholder, the owners of land benefited by such appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why such appropriation, or a portion thereof, should not be canceled.

The notice shall be served personally or sent by registered or certified mail at least thirty days before the date of hearing to the permitholder and to the owners of land benefited by such appropriation as indicated on the application for a water permit on file in the office of the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the register of deeds. In addition, such notice shall be published in a newspaper of general circulation in the county in which the point of diversion is located once each week for two consecutive weeks prior to the date of hearing.

Approved March 28, 1985

CHAPTER 672

SENATE BILL NO. 2252
(Committee on Natural Resources)
(At the request of the Water Commission)

WATER PERMIT CANCELLATIONS

AN ACT to cancel and declare forfeited a portion of water permit numbers 153B and 2143 relating to the right of the Jamestown state hospital and the Hettinger experiment station to appropriate water; and to declare an emergency.

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

SECTION 1. Cancellation of a portion of water permit number 153B. The right of the Jamestown state hospital to appropriate 176 acre-feet of water from the James River for irrigation purposes under water permit number 153B is hereby cancelled and all rights thereunder are hereby forfeited.

SECTION 2. Cancellation of a portion of water permit number 2143. The right of the Hettinger experiment station to appropriate 139.6 acre-feet of water from an unnamed intermittent draw for irrigation purposes under water permit number 2143 is hereby cancelled and all rights thereunder are hereby forfeited.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 673

SENATE BILL NO. 2096
(Legislative Council)
(Interim Water Committee)

WATER RESOURCE DISTRICT MANAGERS' TERM OF OFFICE

AN ACT to amend and reenact section 61-16-08 of the North Dakota Century Code, relating to the term of office of water resource board managers.

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

* SECTION 1. AMENDMENT. Section 61-16-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers. When a water resource district has been created, any resident landowner in the district, except a county commissioner, ~~shall be is~~ eligible, subject to the provisions of this section, for appointment to the water resource board ~~thereof~~. The terms of office of managers appointed to the first water resource board shall be determined by lot and ~~shall be~~ as herein provided. If ~~such the~~ water resource board ~~shall consist~~ consists of three managers, one manager shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, 1982, at least one of the managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five managers, two managers shall hold office for the term of two years, one for three years, one for four years, and one manager for a term of five years from the first day of January next following the date of their respective appointments. After expiration of the first two terms to expire after January 1, 1982, at least two of the managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board ~~shall consist~~ consists of seven managers, two managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, 1982, at least three of

* NOTE: Section 61-16-08 was also amended by section 1 of House Bill No. 1502, chapter 674.

the managers appointed to a seven-member district board shall be from flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and reoccurring flooding. ~~When~~ After June 30, 1985, when the term of office of a district manager has expired, ~~his~~ the manager's successor shall hold office for ~~five~~ three years from the first day of January next following the date of ~~his~~ the successor's appointment. The term of office of a manager ~~shall~~ does not terminate until ~~his~~ the successor in office is appointed and qualified. In case the office of any district manager ~~shall become~~ becomes vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant.

Each member of the water resource board shall receive the sum of forty-five dollars per day while performing ~~his~~ duties as a member of the board, and 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 shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing ~~such~~ the manager must be apprised of and allowed ample opportunity to repudiate ~~such~~ the evidence, that ~~such~~ the manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

Approved February 6, 1985

CHAPTER 674

HOUSE BILL NO. 1502
(Meyer)

WATER MANAGER COMPENSATION

AN ACT to amend and reenact section 61-16-08 of the North Dakota Century Code, relating to compensation of water managers.

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

* SECTION 1. AMENDMENT. Section 61-16-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16-08. Eligibility for appointment to board - Term of office - Removal - Filling vacancies - Compensation of managers. When a water resource district has been created, any resident landowner in the district, except a county commissioner, shall be eligible, subject to the provisions of this section, for appointment to the water resource board thereof. The terms of office of managers appointed to the first water resource board shall be determined by lot and shall be as herein provided. If such water resource board shall consist of three managers, one manager shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment. After expiration of the first term to expire after January 1, 1982, at least one of the managers appointed to a three-member district board shall be from a flood prone area, if any, within the district. When a district board consists of five managers, two managers shall hold office for the term of two years, one for three years, one for four years, and one manager for a term of five years from the first day of January next following the date of their respective appointments. After expiration of the first two terms to expire after January 1, 1982, at least two of the managers appointed to a five-member district board shall be from flood prone areas, if any, within the district. When a board shall consist of seven managers, two managers shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment. After expiration of the first three terms to expire after January 1, 1982, at least three of the managers appointed to a seven-member district board shall be from

* NOTE: Section 61-16-08 was also amended by section 1 of Senate Bill No. 2096, chapter 673.

flood prone areas, if any, within the district. For the purposes of this section, a flood prone area is a floodplain area of a river subject to periodic and ~~reoccurring~~ recurring flooding. When the term of office of a district manager has expired, his successor shall hold office for five years from the first day of January next following the date of his appointment. The term of office of a manager shall not terminate until his successor in office is appointed and qualified. In case the office of any district manager shall become vacant, the manager appointed to fill the vacancy shall serve the unexpired term of the manager whose office became vacant.

Each member of ~~the~~ a water resource board shall receive the sum of at least forty-five dollars per day while performing his duties as a member of the board, and 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 shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A manager may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the manager subject to removal, at which hearing such manager must be apprised of and allowed ample opportunity to repudiate such evidence, that such manager has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, gross incompetency, or inability to perform the duties of office for reasons of health.

Approved March 14, 1985

CHAPTER 675

HOUSE BILL NO. 1235
(Representatives L. Hanson, Melby, W. Williams)
(Senator Wogsland)

ALTERNATE WATER RESOURCE BOARD MEMBERS

AN ACT to create and enact a new section to chapter 61-16 of the North Dakota Century Code, relating to the appointment of an alternate water resource board member upon disqualification of a water resource board member due to a conflict of interest or illness.

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

SECTION 1. A new section to chapter 61-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

Appointment of alternate board member due to conflict of interest or illness. When a member of a water resource board has a conflict of interest in a specific issue before the board or is unable to fulfill the duties of a board member because of physical or mental illness, the county commissioners may appoint a person to serve as an alternate to the disqualified board member. If the disqualification is for a conflict of interest, the alternate board member is to serve only for the purpose of deciding the particular issue causing the conflict. If the disqualification is for physical or mental illness, the alternate board member is to be appointed by the county commissioners only for one meeting at a time.

Approved March 22, 1985

CHAPTER 676

SENATE BILL NO. 2136
(Committee on Natural Resources)
(At the request of the State Auditor)

WATER RESOURCE DISTRICT FISCAL YEAR

AN ACT to amend and reenact sections 61-16.1-06 and 61-16.1-25 of the North Dakota Century Code, relating to the fiscal year of water resource districts.

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

SECTION 1. AMENDMENT. Section 61-16.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-06. District budget - Tax levy - Financing by special assessment. The fiscal year of the district shall begin ~~July~~ January first and end ~~June thirtieth~~ December thirty-first. The water resource board shall estimate the expenses of the district before ~~July~~ October first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan prepared and adopted pursuant to section 61-16.1-13. Upon completion and adoption of a budget covering necessary expenses, the board shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of his or her county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax not exceeding the limitation in section 57-15-26.6 in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by the tax levy shall be available until expended, and if the tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the district expenses may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and

maintenance of a project in a district may, in the discretion of the water resource board, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

* SECTION 2. AMENDMENT. Section 61-16.1-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-25. Financial reports - Liability for deficiencies. On the first Monday of each month the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding month and the amount and items of expenditure during that month. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the county auditor of each county in which the district lies and shall be open to public inspection.

During the month of ~~June~~ January of each year the water resource board shall prepare a complete statement of the condition of the finances of the district for the past year and shall cause the same to be filed with the county auditor of each county in which the district lies on or before ~~July~~ February first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its ~~July~~ February meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the

* NOTE: Section 61-16.1-25 was also amended by section 2 of Senate Bill No. 2361, chapter 677.

county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

Approved March 30, 1985

CHAPTER 677

SENATE BILL NO. 2361
(Tweten)WATER RESOURCE DISTRICT FINANCIAL
REPORTS

AN ACT to amend and reenact sections 61-16.1-08 and 61-16.1-25 of the North Dakota Century Code, relating to financial reporting for water resource districts.

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

SECTION 1. AMENDMENT. Section 61-16.1-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-08. County treasurer to collect and remit taxes to district treasurer - Investment of district funds - Expenditure of district funds. The treasurer of each county in which a district, or a part of such a district, is situated shall collect all district taxes and special assessments together with any penalty and interest thereon in the same manner as county taxes are collected, and shall, within twenty days after the close of each month, pay to the treasurer of the district those taxes and assessments collected during the preceding month, and shall notify the secretary of the district of the payment. The In June and December of each year, and as the county commission may otherwise require, the district treasurer shall on or before the twentieth day of each month report to each member of the water resource board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each regular meeting of the board the treasurer shall submit to the board a statement of the district's finances.

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or any other officer, employee, or

agent of the district authorized by the treasurer to sign on behalf of the treasurer. The authorization shall be in writing and filed with the secretary of the district.

* SECTION 2. AMENDMENT. Section 61-16.1-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-25. Financial reports - Liability for deficiencies. On the first Monday of each month in June and December of each year and as otherwise required by the county commission appointing the managers of the district, the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding month period and the amount and items of expenditure during that month period. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the county auditor of each county in which the district lies and shall be open to public inspection.

During the month of June of each year the water resource board shall prepare a complete statement of the condition of the finances of the district and shall cause the same to be filed with the county auditor of each county in which the district lies on or before July first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its July meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances

* NOTE: Section 61-16.1-25 was also amended by section 2 of Senate Bill No. 2136, chapter 676.

made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

Approved March 30, 1985

CHAPTER 678

HOUSE BILL NO. 1501
(Meyer)

WATER RESOURCE BOARD DUTIES

AN ACT to amend and reenact section 61-16.1-10 of the North Dakota Century Code, relating to duties of the water resource board; and to repeal sections 61-16.1-03 and 61-16.1-13, relating to boundaries of water resource districts and master plans.

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

SECTION 1. AMENDMENT. Section 61-16.1-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-10. Responsibilities and duties of water resource board. Each water resource board shall have the following responsibilities and mandatory duties:

1. ~~To meet~~ Meet jointly with other water resource boards within a common river basin at least twice each year at ~~such~~ times and places as ~~may be~~ mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.
2. ~~To cooperate~~ Cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
3. ~~To enter into an agreement~~ Exercise jointly with all other water resource districts ~~of within~~ a river basin ~~to address collectively and attempt to effectively~~ resolve the significant and common water resource management problem or problems of the river basin or region and to jointly develop a comprehensive plan for the river basin or region.
4. ~~To encourage~~ Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and ~~to~~ carry out to the maximum extent possible the water management policy that

upstream landowners who and districts that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.

5. In the planning of any surface water project which will have an impact downstream in the district or another water resource district, to address Address and consider fully such impacts in the planning of any surface water project the downstream impacts caused by the project. A determination of whether to proceed with the construction of any such a project shall be based on the following principles:
 - a. Reasonable necessity of the project.
 - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
 - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
6. ~~To require~~ Require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

SECTION 2. REPEAL. Sections 61-16.1-03 and 61-16.1-13 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 14, 1985

CHAPTER 679

SENATE BILL NO. 2097
(Legislative Council)
(Interim Water Committee)

**PROPERTY SUBJECT TO WATER RESOURCE BOARD
MILL LEVIES**

AN ACT to amend and reenact subsection 2 of section 61-16.1-11 of the North Dakota Century Code, relating to joint water resource board mill levies.

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

SECTION 1. AMENDMENT. Subsection 2 of section 61-16.1-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The districts which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may adopt, by resolution, on or before July first of each year, a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts then shall levy by resolution, ~~an ad valorem~~ a tax not to exceed two mills upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. The levy may be in excess of any other levy authorized for a district.

Approved March 30, 1985

CHAPTER 680

SENATE BILL NO. 2202
(Committee on Natural Resources)
(At the request of the Water Commission)

WATER RESOURCE BOARD ASSESSMENT APPEALS

AN ACT to amend and reenact section 61-16.1-23 of the North Dakota Century Code, relating to appeals from assessments of water resource boards.

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

SECTION 1. AMENDMENT. Section 61-16.1-23 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-23. Appeal to state engineer. After the hearing provided for in section 61-16.1-22, affected landowners, and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, he may proceed to correct the same, and his correction and adjustment of said assessment shall be final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, he may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed project. Any landowner or political subdivision who or which claims that he or it will receive no benefit at all from the construction of a new project may appeal to the state engineer within ten days after the hearing on assessments, the question of whether there is any benefit to the state engineer. The state engineer shall not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision, but shall only determine if there is any benefit to the landowner or political subdivision, and the determination of the state engineer upon such question shall be final.

Approved March 30, 1985

CHAPTER 681

SENATE BILL NO. 2316
(Tweten)

DRAIN MAINTENANCE ASSESSMENTS

AN ACT to amend and reenact sections 61-16.1-45 and 61-21-46 of the North Dakota Century Code, relating to assessments for drain maintenance.

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

SECTION 1. AMENDMENT. Section 61-16.1-45 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-45. Maintenance of drainage projects. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for such maintenance shall not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands benefited by the drain. The district may, at its own discretion, utilize either of the following methods for levying special assessments for such maintenance.

1. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre [.40 hectare]. Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.
2. Agricultural lands shall be assessed uniformly throughout the entire assessed area. Nonagricultural property shall be assessed an amount not to exceed one dollar for each

five hundred dollars of taxable valuation of such nonagricultural property.

In case the maximum levy of one dollar per acre [.40 hectare] or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for five two years.

If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount which can be levied by the board in any two-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 prior to obligating the district for such costs.

SECTION 2. AMENDMENT. Section 61-21-46 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-46. Maximum levy - Accumulation of fund. The levy in any year for cleaning out and repairing a drain shall not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands in the drainage district.

1. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar and fifty cents per acre [.40 hectare]. Nonagricultural property shall be assessed such sum in any one year as the rationing of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
2. Agricultural lands shall be assessed uniformly throughout the entire assessed area. Nonagricultural property shall be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of such nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years. If the cost of, or obligation for, the cleaning and repair of any drain shall exceed the total amount which can be levied by the board in

any two-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 prior to obligating the district for such costs.

Approved March 30, 1985

CHAPTER 682

SENATE BILL NO. 2234
 (Committee on Natural Resources)
 (At the request of the Water Commission)

ARTESIAN WELLS

AN ACT to amend and reenact sections 61-20-01, 61-20-02, and 61-20-03 of the North Dakota Century Code, relating to artesian wells.

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

SECTION 1. AMENDMENT. Section 61-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-01. Valve or valves required on artesian well - Flow permitted from artesian wells - Preventing flow. Every person, stock company, association, or corporation owning or controlling the real estate upon which is located an artesian or flowing well shall provide for each such well a valve or valves capable of controlling the discharge from such well and shall keep such valve or valves so adjusted that only such supply of water shall escape as is necessary for ordinary use by the owner, or the person in control, of such land, in conducting his business. In the winter, such flow may be permitted as will prevent freezing of the well, and in those cases where it is necessary, a sufficient flow may be allowed to prevent clogging of for the purposes of developing the well. The owner of an artesian well shall be required, by means of the construction of a reservoir or otherwise, to prevent the flow of his well from running upon land belonging to another or from running into any ditch along any public highway except a regularly established drainage ditch.

SECTION 2. AMENDMENT. Section 61-20-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-02. Drilling artesian or flowing well - Requirements --Valve below frost level. Every person, stock company, association, or corporation which shall drill an artesian or flowing well, shall drill a small smooth hole through the cap-rock to fit the pipe closely, and shall use every possible means to seal around the main pipe in such a manner that no water can escape from the flow. No dynamite or other explosive shall be used in penetrating the water

covering layer of cap-rock. This does not apply to boulders of granite or other obstacles in non-water-bearing horizons. Where the top part of the water-bearing layers of any given flow are soft and crumbling, yielding muddy or sandy flow, the driller may not end the well at this level, but must test the layers by boring on down a reasonable distance, from five to twenty-five feet at least, and more, if the owner of the land requires, to locate a terminus in a firm sandrock which will stand firm, preventing dirty flow and permitting regulation of the flow. Once the firm stratum is located, the driller shall attach in it at the end of the well pipe a strainer of noncorrosive material, with numerous small perforations to insure clear pure water and nonclogging. If the owner requests, the driller must place a valve below frost level with a handle reaching to the surface so that the well may be entirely shut off at will. He shall extend the outside or surface casing to, and fit the same solidly into, the shale or hard clay formation a sufficient distance entirely to prevent a flow around the casing. He shall seal between casing and pipe comply with the rules of the state engineer regarding such activity.

SECTION 3. AMENDMENT. Section 61-20-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-20-03. Well clogged to be left open - Application of chapter-- Wild wells. In case of a new well in any soft formation where clay, sand, or any sediment is liable to cause clogging, the valve may be left open until the well has cleared sufficiently. It then shall be adjusted finally to normal conditions. The provisions of this chapter shall apply to a "wild" well, or a well out of control, except that if it is determined by the state engineer that such well cannot be repaired for use, no valve shall be attached, but every effort shall be made by the owner to seal, plug, or cut off the same, when in the estimation of the state geologist it will cause no less other than a reasonable amount of repair cost. Old wells which might be damaged by so doing need not be shut off, but such wells shall be put in repair at the earliest possible date and shall be regulated thereafter.

Approved March 27, 1985

WEAPONS

CHAPTER 683

HOUSE BILL NO. 1069
(Legislative Council)
(Interim Judiciary "B" Committee)

WEAPONS TITLE REVISION

AN ACT to create and enact chapters 62.1-01, 62.1-02, 62.1-03, 62.1-04, and 62.1-05 of the North Dakota Century Code, relating to the possession, sale, and use of weapons; to amend and reenact section 20.1-01-05 of the North Dakota Century Code, relating to methods of taking of game birds and animals; to repeal chapter 12.1-26 and title 62 of the North Dakota Century Code, relating to the possession, sale, and use of weapons; and to provide a penalty.

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

SECTION 1. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the right to possess and use firearms for lawful purposes be protected from government interference, and that regulation thereof be limited to those measures necessary for public safety. It is the intent of the legislative assembly that the chief of the bureau of criminal investigation issue a license to carry a firearm concealed if the necessary criteria are met. It is further the intent of the legislative assembly that the chief may not use the criterion requiring a valid reason for carrying the firearm concealed to arbitrarily deny an application for a license.

* SECTION 2. AMENDMENT. Section 20.1-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-05. Unauthorized methods of taking game birds and game animals. Except as otherwise provided in this title, no person, for the purpose of catching, taking, killing, or raising any game birds or game animals shall may:

1. Set, lay, or prepare any trap, snare, artificial light, net, birdlime, swivel gun, or any other device;
2. Drag, in any manner, any wire, rope, or other contrivance;
or

* NOTE: Section 20.1-01-05 was also amended by section 1 of House Bill No. 1339, chapter 271.

3. Use or cause to be used, except for transportation, any floating device or apparatus operated by electricity, steam, or gasoline, or any other floating vessel;
4. Use a firearm with any kind or type of silencer on it; or
5. Carry any firearm while in or on a motor vehicle with a cartridge in the chamber.

SECTION 3. Chapter 62.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-01-01. General definitions. As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any stun gun; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm having a barrel less than sixteen inches [40.64 centimeters] long that is not designed to be fired from the shoulder.
7. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to

enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second.
9. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
10. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
11. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
12. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
13. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
14. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

15. "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
16. "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell. Handguns with a removable magazine or clip must have the magazine or clip removed from the firearm if the magazine or clip contains any loaded shells.

62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and convicted of crime. Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for stolen property, the forfeited firearm or dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or authorized firearm dealers, retained for use, or destroyed.

62.1-01-03. Limitation on authority of political subdivision regarding firearms. No political subdivision, including home rule cities or counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

SECTION 4. Chapter 62.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-02-01. Who not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of ten years from the date of conviction or release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of five years from the date of conviction or release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North

Dakota or elsewhere by a court of competent jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.

4. A person under the age of eighteen years may not possess a handgun except that such a person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended or deferred imposition of sentence in accordance with sections 12-53-13 through 12-53-19 or placed the defendant on probation.

62.1-02-02. Sale of handgun regulated - Penalty. No person may transfer a handgun to any person who the transferor knows or has reasonable cause to believe is a person prohibited by section 62.1-02-01 from possessing a firearm. Any person who violates this section is guilty of a class A misdemeanor.

62.1-02-03. Possession or sale of short-barreled rifle or shotgun - Penalty - Application. A person who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun is guilty of a class C felony. This section does not apply to a law enforcement officer who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun in the course of or in connection with the officer's official duties, to a member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations who possesses or uses a short-barreled rifle or short-barreled shotgun issued to the member by that organization and while on official duty, or to any person who complies with the National Firearms Act [26 U.S.C. 5801-5872].

62.1-02-04. Possession of firearm or dangerous weapon in liquor establishment or gaming site prohibited - Penalty - Exceptions. Any person who enters or remains in that part of the establishment that is set aside for the retail sale in an establishment engaged in the retail sale of alcoholic beverages or used as a gaming site while in the possession of a firearm or dangerous weapon is guilty of a class A misdemeanor. This section does not apply to:

1. A law enforcement officer.
2. The proprietor.

3. The proprietor's employee.
4. A designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.

62.1-02-05. Possession of a firearm at a public gathering - Penalty - Application.

1. A person who possesses a firearm at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.
2. This section does not apply to law enforcement officers; members of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty; competitors participating in organized sport shooting events; gun and antique shows; participants using blank cartridge firearms at sporting or theatrical events; any firearms carried in a temporary residence or motor vehicle; students and instructors at hunter safety classes; or private security personnel while on duty.
3. This section does not prevent any political subdivision from enacting an ordinance which is less restrictive than this section relating to the possession of firearms at a public gathering. Such an ordinance supersedes this section within the jurisdiction of the political subdivision.

62.1-02-06. Discharge of firearm within city - Penalty - Application. A person who discharges a firearm within a city is guilty of a class B misdemeanor. This section does not apply to the lawful discharge of firearms by law enforcement officers, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity including but not limited to shooting galleries and ranges.

62.1-02-07. Use of firearm by certain minors prohibited - Penalty. Any parent, guardian, or other person having charge or custody of any minor under fifteen years of age who permits that minor to carry or use in public any firearm of any description loaded with powder and projectile, except when the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian, is guilty of a class B misdemeanor.

62.1-02-08. Illegal firearms, ammunition, or explosive materials business.

1. A person is guilty of an offense if the person supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material for, a person prohibited by this title from receiving it if the transferor knows or has reasonable cause to believe that such person is prohibited by section 62.1-02-01 from receiving or possessing it.
2. The offense is a class C felony if the actor:
 - a. Was not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to the firearm, destructive device, or explosive material; or
 - b. Engaged in the forbidden transaction under circumstances manifesting the actor's readiness to supply or procure on other occasions in disregard of lawful restrictions.

Otherwise the offense is a class A misdemeanor.

62.1-02-09. Possession of explosive and destructive device in government building - Penalty. A person, except for a law enforcement officer while on official business, is guilty of a class C felony if the person possesses an explosive or destructive device in a government building without the written consent of the government agency or person responsible for the management of the building.

62.1-02-10. Carrying loaded firearm in vehicle - Penalty - Exceptions. No person may keep or carry a loaded firearm in or on any motor vehicle in this state. Any person violating this section is guilty of a class B misdemeanor. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.
2. A law enforcement officer, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.
3. Any person possessing a valid North Dakota concealed weapons license, except while that person is in the field engaged in hunting or trapping activities.

4. Any person in the field engaged in lawful hunting or trapping of nongame species or furbearing animals.
5. A security guard or private investigator licensed to carry firearms by the attorney general.
6. Any person possessing a valid special permit issued pursuant to section 20.1-02-05.

62.1-02-11. Possessing explosive prohibited - Exception - Penalty. No person may have in custody, possession, or control, any nitroglycerin, dynamite, or any other dangerous or violent explosive unless the explosive is carried in the prosecution of or to effect a lawful and legitimate purpose. Any person violating this section is guilty of a class C felony.

62.1-02-12. Resident may purchase rifle or shotgun in contiguous state - Application - Definitions. It is lawful for a person residing in this state, including a corporation or other business entity maintaining a place of business in this state, to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this state, and to receive or transport that rifle or shotgun into this state. This section does not apply nor may it be construed to affect in any way the purchase, receipt, or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers, or collectors. As used in this section, all terms have the meaning prescribed in the Gun Control Act of 1968 [Pub. L. 90-618; 18 U.S.C. 921] and the regulations promulgated thereunder as enacted or promulgated on July 1, 1985.

SECTION 5. Chapter 62.1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-03-01. Carrying handgun - Restrictions - Exceptions.

1. A handgun may be carried by a person not prohibited from possessing one by section 62.1-02-01 or any other state statute, in a manner not prohibited by section 62.1-02-10 if:
 - a. Between the hours of one hour before sunrise and one hour after sunset, the handgun is carried unloaded and either in plain view or secured.
 - b. Between the hours of one hour after sunset and one hour before sunrise, the handgun is carried unloaded and secured.
2. The restrictions provided in subdivisions a and b of subsection 1 do not apply to:
 - a. Any person possessing a valid North Dakota concealed weapons license.

- b. Any person on that person's land, or in that person's permanent or temporary residence, or fixed place of business.
- c. Any person while lawfully engaged in target shooting.
- d. Any person while in the field engaging in the lawful pursuit of hunting or trapping. However, nothing in this exception authorizes the carrying of a loaded handgun in a motor vehicle.
- e. Any person permitted by law to possess a handgun while carrying the handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair or back from those locations.
- f. Any North Dakota law enforcement officer.
- g. Any law enforcement officer of any other state or political subdivision thereof if on official duty within this state.
- h. Any armed security guard or investigator as authorized by the attorney general when on duty or going to or from duty.
- i. Any member of the armed forces of the United States when on duty or going to or from duty and when carrying the handgun issued to the member.
- j. Any member of the national guard, organized reserves, state defense forces or state guard organizations, when on duty or going to or from duty and when carrying the handgun issued to the member by the organization.
- k. Any officer or employee of the United States duly authorized to carry a handgun.
- l. Any person engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of such person possessing, using, or carrying a handgun in the usual or ordinary course of such business.
- m. Any common carrier, but only when carrying the handgun as part of the cargo in the usual cargo carrying portion of the vehicle.

62.1-03-02. Selling handgun to minors prohibited - Penalty. Any person who sells, barter, hires, lends, or gives any handgun to any minor is guilty of a class A misdemeanor. This section does not prohibit a person from lending or giving a handgun to a minor if the minor will be using the handgun under the direct supervision of an

adult and for the purpose of firearm safety training, target shooting, or hunting.

62.1-03-03. Copy of federal license submitted to law enforcement officials. A retail dealer licensed to sell handguns by the federal government shall send a copy of the license, within seven days after receiving it, to the chief of police of the city and the sheriff of the county in which the dealer is licensed to sell handguns.

62.1-03-04. False information prohibited. No person, in purchasing or otherwise securing delivery of a handgun or in applying for a license to carry the handgun concealed, may give false information or offer false evidence of the person's identity.

62.1-03-05. Prohibited alterations in handgun. No person may change, alter, remove, or obliterate any mark of identification on a handgun, such as the name of the maker, model, or manufacturer's number or knowingly possess a handgun on which such alterations have been made. Possession of any handgun upon which any such identification mark has been changed, altered, removed, or obliterated creates a rebuttable presumption that the possessor made the alterations.

62.1-03-06. General penalty. Any person who violates any provision of this chapter, for which another penalty is not specifically provided, is guilty of a class A misdemeanor.

SECTION 6. Chapter 62.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-04-01. Definition of concealed. A firearm or dangerous weapon is concealed if it is carried in such a manner as to not be discernible by the ordinary observation of a passerby. There is no requirement that there be absolute invisibility of the firearm or dangerous weapon, merely that it not be ordinarily discernible. A firearm or dangerous weapon is considered concealed if it is not secured, and is worn under clothing or carried in a bundle that is held or carried by the individual, or transported in a vehicle under the individual's control or direction and available to the individual, including beneath the seat or in a glove compartment. A firearm or dangerous weapon is not considered concealed if it is:

1. Carried in a belt holster which is wholly or substantially visible or carried in a case designed for carrying a firearm or dangerous weapon and which is wholly or substantially visible;
2. Locked in a closed trunk or luggage compartment of a motor vehicle;
3. Carried in the field while lawfully engaged in hunting, trapping, or target shooting, whether visible or not; or

4. Carried by any person permitted by law to possess a handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair, or back from those locations.
5. A bow and arrow, an unloaded rifle or shotgun, or an unloaded weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon commonly referred to as a BB gun, air rifle, or CO₂ gun, while carried in a motor vehicle.

62.1-04-02. Carrying concealed firearms or dangerous weapons prohibited. No person, other than a law enforcement officer, may carry any firearm or dangerous weapon concealed unless the person is licensed to do so or exempted pursuant to this chapter. For purposes of this chapter, dangerous weapon does not mean a spray or aerosol containing CS (ortho-chlorobenzamalotrile), CN (alpha-chloroacetophenone) or other irritating agent intended for use in the defense of a person.

62.1-04-03. License to carry a firearm or dangerous weapon concealed.

1. The chief of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the chief if the following criteria are met:
 - a. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.
 - b. The applicant is not a person specified in section 62.1-02-01.
 - c. The applicant has the written approval for the issuance of such a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has attended a testing procedure conducted pursuant to rules adopted by the attorney general. The testing procedure for approval of a concealed weapons license must include an open book test to be given from a manual that sets forth weapon safety rules and the deadly force law of North Dakota, including judicial decisions and attorney general opinions, and a proficiency test consisting of a course of fire to be designated by the criminal justice training and statistics division of the

- attorney general's office. The purpose of the proficiency test is only to ensure a minimal level of competency in the loading and unloading of the firearm or dangerous weapon, use of safety devices and basic firearm or dangerous weapon functioning, and minimal accuracy. A weapons instructor certified by the attorney general shall conduct the testing procedure. The attorney general shall develop rules that ensure that this testing will be conducted periodically. The local agency conducting the testing may assess a charge of up to fifty dollars for conducting this testing.
- d. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency.
2. The sheriff is required to process the application within thirty days after the completion of the testing portion, the chief of police is required to process the application within ten working days of its receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within thirty days of receipt from the forwarding agency.
3. The chief of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The license is valid for three years. The license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the chief. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual shall notify the chief of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
4. The chief of the bureau of criminal investigation may deny an application or revoke or cancel such a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title.

5. The applicant may appeal a denial or revocation of this license to the district court of the applicant's county of residence.
6. The attorney general may adopt rules to carry out this title.

62.1-04-04. Producing license on demand. Every person while carrying a concealed firearm or dangerous weapon for which a license to carry concealed is required, shall have on one's person the license and shall give it to any law enforcement officer for an inspection upon demand by the officer. The failure of any person to give the license to the officer is prima facie evidence that the person is illegally carrying a firearm or dangerous weapon concealed.

62.1-04-05. Penalty. Any person who violates this chapter is guilty of a class A misdemeanor.

SECTION 7. Chapter 62.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

62.1-05-01. Possession and sale of machine guns, automatic rifles, silencers, and bombs - Penalty. 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 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 the firearm or dangerous weapon must be seized and upon conviction and motion, forfeited to the jurisdiction in which the arrest was made and the firearm or dangerous weapon may be, pursuant to court order, sold at public auction, retained for use, or destroyed.

62.1-05-02. Persons exempt from chapter. This chapter does not apply to:

1. The authorized agent and a servant of a person who has a license to purchase, sell, have, or possess a machine gun, submachine gun, fully automatic rifle, silencer, or a bomb loaded with explosives or poisonous or dangerous gases.

2. Any officer or member of a duly authorized military organization while on official duty and using the firearm or dangerous weapon issued to the officer or member by that organization.
3. A North Dakota law enforcement officer.
4. Any federal officer authorized by the federal government to have or possess a machine gun, submachine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases.

SECTION 8. REPEAL. Chapter 12.1-26 and title 62 of the North Dakota Century Code are hereby repealed.

Approved April 15, 1985

WEEDS

CHAPTER 684

HOUSE BILL NO. 1458
(Representatives O. Hanson, Gunsch, Watne)
(Senators Parker, W. Meyer, Lips)

WEED CONTROL — LEAFY SPURGE APPROPRIATION

AN ACT to amend and reenact subsection 2 of section 63-01.1-06 of the North Dakota Century Code, relating to funding weed control; and to provide an appropriation for leafy spurge control.

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

SECTION 1. AMENDMENT. Subsection 2 of section 63-01.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 and the director of the agricultural experiment station, Fargo, or their respective designees. No county weed board shall 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 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-third~~ 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. 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, to the commissioner of agriculture for leafy

spurge control for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 5, 1985

WORKMEN'S COMPENSATION

CHAPTER 685

HOUSE BILL NO. 1199
 (Committee on Industry, Business and Labor)
 (At the request of Workmen's Compensation Bureau)

EMPLOYEES' CHILDREN'S WORKMEN'S COMPENSATION BENEFITS

AN ACT to create and enact a new subsection to section 65-01-02 of the North Dakota Century Code, relating to the definition of orphan; and to amend and reenact subsection 6 of section 65-01-02, and sections 65-05-09 and 65-05-17 of the North Dakota Century Code, relating to the definition of child and workmen's compensation benefits payments for children of disabled or deceased employees.

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

SECTION 1. AMENDMENT. Subsection 6 of section 65-01-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Child" ~~shall include~~ 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 he actually is dependent.

SECTION 2. A new subsection to section 65-01-02 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Orphan" means a child who has no lawful parent.

SECTION 3. AMENDMENT. Section 65-05-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 weekly wage of the claimant, computed to the next highest dollar, subject to a minimum of sixty percent and a maximum of one hundred percent of the average weekly wage in this state, computed to the next highest dollar. If an employee is disabled due to an injury, that employee's benefits will be based upon the wage at the time of the commencement of the first disability. However, if an employee suffers disability but is able to return to employment for a period of twelve 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 benefits shall be those in effect at the time of that recurrence. In case of temporary total or permanent total disability, there shall be paid to such disabled employee an additional sum of five dollars per week for each dependent child under the age of eighteen years living or unborn at the date of the injury, or born during the period of disability, and for each child over eighteen years and incapable of self-support due to physical or mental disability and whose maintenance is the responsibility of the claimant of the employee. Dependency awards for the children may be made directly to either parent or guardian at the discretion of the bureau. In no case shall the compensation or combined compensation and dependency award exceed the weekly wage of the claimant employee after deductions for taxes, except in the case of volunteer firemen and volunteer disaster emergency trainees. When a claimant an employee who is permanently and totally disabled and must be maintained in a nursing home or similar facility has no dependent parent, spouse, or children, part or all of his weekly compensation may be used by the bureau to help defray the cost of such care.

* SECTION 4. AMENDMENT. Section 65-05-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified, a weekly compensation:

1. To the spouse or guardian of the orphaned child or children of the decedent, an amount equal to two-thirds of the weekly wage of the deceased, not to exceed two hundred ten dollars per week, until the death or remarriage of the spouse; or, in the case of a guardian, until the orphaned child or children of the decedent reach the age of eighteen, or, if such child or children are incapable of self-support, until they are capable of self-support no longer meets the definition of child in this title. Where there is more than one orphaned child of a decedent, death benefits shall be divided equally among guardians. In no

* NOTE: Section 65-05-17 was also amended by section 2 of House Bill No. 1565, chapter 688.

case shall total death benefits be less than ten dollars per week. In no case shall total death benefits exceed one hundred seventy-five thousand dollars as a result of any employee's death.

2. To each surviving dependent child or issue of said of the deceased employee born within ten months after the employee's date of death, the amount of seven dollars until such child dies, marries, or reaches the age of eighteen years or if such child is incapable of self-support until it becomes capable of self-support per week. The bureau, in its discretion, may make such this payment directly to such surviving the child or issue of the deceased employee or to the surviving parent or guardian of such the child or issue.

In addition to the awards herein, the commissioners shall make an award in the sum of three hundred dollars to the spouse or guardian of the orphaned child or children of the deceased and one hundred dollars for each dependent child. Where there is more than one guardian of orphaned children, the three hundred dollars shall be divided equally among such the guardians.

Approved March 29, 1985

CHAPTER 686

SENATE BILL NO. 2073
(Legislative Council)
(Interim Government Reorganization Committee)

PAYROLL INFORMATION FROM EMPLOYERS

AN ACT to amend and reenact section 65-04-15 of the North Dakota Century Code, relating to release of payroll information from employers.

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

SECTION 1. AMENDMENT. Section 65-04-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 ~~shall be~~ is for the exclusive use and information of the bureau in the discharge of its official duties and ~~shall is~~ is not ~~be~~ open to the public nor ~~used~~ usable in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in ~~such the~~ 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 ~~shall be~~ is disqualified from holding any office or employment with the bureau.

The workmen's compensation bureau may upon request of the state tax commissioner, ~~the commissioner of labor,~~ or the secretary of state furnish to them a list or lists of employers showing only the names, addresses, and workmen's compensation bureau file identification numbers of such employers; provided, that any such list so furnished shall be used by the tax commissioner, ~~the commissioner of labor,~~ 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 bureau with information obtained pursuant to the administration of the North Dakota workmen's compensation law 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 bureau.

Approved March 22, 1985

CHAPTER 687

HOUSE BILL NO. 1191
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

WORKMEN'S COMPENSATION LIEN PRIORITY

AN ACT to amend and reenact section 65-04-26 of the North Dakota Century Code, relating to the priority of the lien for bureau claims for premiums in default and penalties.

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

SECTION 1. AMENDMENT. Section 65-04-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-26. Remedies available in action for delinquent premiums - Exemptions restricted. The claim of the bureau in bankruptcy, probate, insolvency, and receivership proceedings for premiums in default and penalties shall be a lien with the same priority as prior income tax liens, except that this lien shall not be enforceable against a purchaser (including a lien creditor) of real estate or personal property for valuable consideration without notice. Notice of this lien shall be filed in the place and manner provided for in section 57-38-49. A certificate of the bureau that premiums and penalties are due for the period stated in the certificate is prima facie evidence of this fact. In any action brought for the recovery of delinquent or defaulted premiums in default and penalties, the remedies of garnishment or attachment, or both, shall be available. No exemptions except absolute exemptions shall be allowed against any levy under execution pursuant to judgment recovered in such action.

Approved March 27, 1985

CHAPTER 688

HOUSE BILL NO. 1565
(Representatives Retzer, Haugland, Graba)
(Senators Redlin, Wenstrom)

WORKMEN'S COMPENSATION SUPPLEMENTAL AND DEATH BENEFITS

AN ACT to amend and reenact section 65-05-09.1, subsection 1 of section 65-05-17, and sections 65-05.2-01 and 65-05.2-02 of the North Dakota Century Code, relating to the social security offset, to workmen's compensation death benefits and to supplementary workmen's compensation benefits.

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

SECTION 1. AMENDMENT. Section 65-05-09.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09.1. Social security offset. When an injured employee, spouse or dependent of an injured employee, is eligible for and is receiving permanent total or temporary total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will receive, benefits under Title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits payable under section 65-05-09 shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half of such federal benefit. The amount of the offset computed by the bureau initially will remain the same throughout the period of eligibility and will not be affected by any increase or decrease in federal benefits.

Any injured employee, or dependent of an injured employee, receiving permanent total or temporary total disability benefits under section 65-05-09 and whose benefits are offset as provided herein, shall not be eligible for any escalation of benefits, which would adversely affect the bureau's right to offset workmen's compensation benefits against social security benefits, as provided for in this chapter. This offset will become effective on January 1, 1980, provided that it meets the criteria necessary to allow states to offset federal benefits under Title II of the Social Security Act [42 U.S.C. 424a].

* SECTION 2. AMENDMENT. Subsection 1 of section 65-05-17 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. To the spouse or guardian of the orphaned child or children of the decedent, an amount equal to two-thirds of the weekly wage of the deceased, not to exceed two hundred ten dollars per week, until the death or remarriage of the spouse; or, in the case of a guardian, until the orphaned child or children of the decedent reach the age of eighteen; or, if such child or children are incapable of self-support, until they are capable of self-support. Where there is more than one orphaned child of a decedent, death benefits shall be divided equally among guardians. In no case shall total death benefits be less than ~~ten dollars per week~~ fifty percent of the maximum weekly death benefits. In no case shall total death benefits exceed one hundred seventy-five thousand dollars as a result of any employee's death.

SECTION 3. AMENDMENT. Section 65-05.2-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-01. Eligibility for supplementary benefits. Any workmen's compensation claimant who was receiving temporary total disability benefits, permanent total disability benefits, or death benefits as of July 1, ~~1975~~ 1980, and is receiving such benefits as of July 1, ~~1979~~ 1985, is eligible for supplementary benefits. Eligibility for supplementary benefits starts on July 1, ~~1979~~ 1985, and lasts for as long as the claimant is entitled to workmen's compensation benefits.

SECTION 4. AMENDMENT. Section 65-05.2-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-02. Supplementary benefits - Amount. If a claimant was eligible for the maximum permanent total disability or death benefits in effect at the time of injury, supplementary benefits are fifty percent of the difference between the amount of benefits which the claimant was originally receiving and the maximum amount of benefits in effect on July 1, 1975. Supplementary benefits for a claimant who was eligible for less than the maximum permanent total disability or death benefits in effect at the time of the injury shall be fifty percent of the difference between the amount of benefits the claimant was originally receiving and the benefits in effect on July 1, 1975, in the same proportion as the claimant's present benefits bear to the maximum benefits in effect at the time of injury. Claimants who are eligible for supplementary benefits and who are receiving temporary total disability benefits or permanent total disability benefits shall receive a weekly benefit in an amount not less than one hundred forty-three dollars per week. Claimants who are eligible for supplementary benefits and who are receiving death benefits shall receive a weekly benefit in an amount not less than eighty-four dollars per week.

Approved March 31, 1985

* NOTE: Section 65-05-17 was also amended by section 4 of House Bill No. 1199, chapter 685.

CHAPTER 689

HOUSE BILL NO. 1540
(Kloubec)WORKMEN'S COMPENSATION BUREAU
INFORMATION

AN ACT to create and enact a new chapter to title 65 of the North Dakota Century Code to provide for an employee information program concerning the use of hazardous substances in the workplace, inspections and enforcement by the workmen's compensation bureau, and responsibilities of the department of health and the state laboratories department.

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

SECTION 1. A new chapter to title 65 of the North Dakota Century Code is hereby created and enacted to read as follows:

Employee information program. Each employer shall implement an employee information program designed to inform employees about hazardous substances to which they are exposed. This information must include the nature of the hazards, appropriate work practices, protective measures, and emergency procedures. "Hazardous substance" means a chemical or substance or mixture of chemicals or substances which is defined as a hazardous substance under the federal Comprehensive Environmental Responses Compensation, and Liability Act of 1980, as amended [Pub. L. 96-510; 94 Stat. 2767; 42 U.S.C. 9601 et seq.] and meets or exceeds the listed reportable quantity for that substance.

Inspection and duties of the bureau.

1. The bureau may conduct inspections of workplaces where toxic or hazardous substances are used, manufactured, or stored.
2. The bureau may issue citations for any violations of this Act. The bureau may issue a stop order pursuant to chapter 28-32 to anyone not in compliance with this Act.
3. The bureau shall investigate any complaint which alleges that employees have been ordered to work with toxic or

hazardous substances which have not been included in the employee information program under this Act.

4. The bureau shall adopt appropriate practices and procedures to protect information identified as trade secrets from improper use or dissemination beyond the purposes of this Act.
5. The bureau may, upon written application by the employer, authorize variances from the provisions of this Act which are not contrary to the public interest or the intent of this Act.
6. The bureau shall grant a variance from the requirements of this Act to an employer who demonstrates that the employer is regulated under federal or other laws of this state which require employee information programs dealing with hazardous substances and that such programs have been implemented.

Employees' rights. Employees or their designated representatives may request, and the employer or employers shall provide, any information relating to toxic or hazardous substances which the employer is required to provide under this Act.

Role of department of health and state laboratories department. The department of health and the state laboratories department shall:

1. Review and make recommendations to the bureau for modifications in the information required to be provided to employees under this Act.
2. Provide technical assistance to employers and the bureau on establishing safety procedures to minimize the public environmental and occupational health hazards from the use of hazardous chemicals and provide aid and assistance to small employers, vendors, sellers, or dispensers in complying with this Act.
3. Upon request of the bureau, examine information claimed to be a trade secret under this Act.
4. Provide and review on a continuous schedule, but at least annually, for the purposes of this Act, listings of hazardous substances that could likely be found in a workplace in this state.

Approved March 29, 1985

VETOED MEASURES

CHAPTER 690

HOUSE BILL NO. 1061
(Legislative Council)
(Interim Energy Development Committee)

COAL GASIFICATION BYPRODUCTS EXEMPTION

AN ACT to amend and reenact sections 57-60-01 and 57-60-03 of the North Dakota Century Code, relating to definitions for purposes of the privilege tax on coal facilities, to exempt byproducts of the coal gasification process from the gross receipts tax on coal gasification plants, and to annual reporting by the operator of a coal gasification plant of the quantity of byproducts produced.

VETO

February 14, 1985

The Honorable Roy Hausauer
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

You all know as well as I how difficult the revenue situation in North Dakota has become. Since I gave my budget message, it appears my worst fears will be borne out.

As you know, I have already recommended agonizing cuts of \$73 million from former Governor Olson's proposed budget. If revenue projections continue to fall, we could even be faced with tax increases.

Because of that, I cannot entertain the idea of tax breaks to any sector of the economy unless it is justified beyond a shadow of a doubt.

As you know, large energy plants in North Dakota pay the coal conversion tax as a substitute for ad valorem tax paid by other property owners in our State. Under our property tax law, the applicable mill rate is applied to the equivalent of 5% of the true and full value of that property. The statewide mill rates average 240.3 mills, which yields an average property tax of approximately 1.2% of value. I have been informed by the Tax Department that the real property portion of large industrial facilities of this type averages approximately 50% of the total cost.

Applying the statewide average of 1.2% of value against half the value of the existing coal gasification plant yields a tax of over \$25 million per biennium. That is how they would be taxed if they were taxed as other property owners are taxed. Our revenue estimates under the current in lieu of property tax law indicate that that plant will pay only a total of \$18.7 million in tax during the next biennium.

Therefore, it is my judgment that the present law provides a very reasonable level of taxation on coal gasification plants when measured by the yardstick of the burden placed on the property owned by others in this state. Because that is true, I cannot justify a tax break that will certainly have, over time, a great impact on North Dakota revenues.

Finally, I believe it is also essential that you realize how strongly I am committed to a fair and balanced tax system. The existing tax appears to be eminently fair.

Therefore, I veto HB 1061.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Section 57-60-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-01. Definitions. As used in this chapter:

1. "Byproducts" means commercially usable products produced during the coal gasification process other than the principal product of a coal gasification plant.

2. "Coal conversion facility" means either:

- a. A plant, other than an electrical generating plant, together with all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including but not limited to coal gasification, coal liquefaction, and the manufacture of fertilizer and other products, and which uses or is designed to use over five hundred thousand tons [453,592.37 metric tons] of coal per year; or
- b. An electrical generating plant, together with all additions thereto, which processes or converts coal 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.

2- 3. "Coal gasification" means the production of ~~methane or other commercial gas products~~ synthetic natural gas, methanol, or other principal commercial gaseous or liquid product from coal.

3- 4. "Commissioner" means the state tax commissioner.

4- 5. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, ~~but not including~~. "Gross receipts" does not include any revenue derived from the sale of byproducts of the coal gasification process or transportation, transmission, distribution, or other items events which occur after completion of the process of production of the products of such the facility is completed.

5- 6. "Operator" means any person owning, holding, or leasing a coal conversion facility and conducting the conversion of coal into the products of ~~such facilities~~ the facility.

6- 7. "Person" means any individual, estate, trust, corporation, cooperative corporation, or association.

7- 8. "Synthetic natural gas" means methane and any admixed gaseous products produced by coal gasification.

SECTION 2. AMENDMENT. Section 57-60-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-03. Measurement and recording of synthetic natural gas, byproducts, or electricity produced. The production of synthetic natural gas, byproducts, or electrical power shall be measured at

the place of production or generation, and any person subject to the imposition of the taxes provided by this chapter shall maintain devices to measure and record the cumulative periodic totals of synthetic natural gas, byproducts, and electrical power generated. Any person subject to the taxes imposed by this chapter shall maintain accurate records of the daily and monthly totals of synthetic natural gas and electrical power generated and subject to such taxes. On or before October first of each year the operator of any coal gasification plant shall file a report with the state health officer listing the quantity of byproducts produced during the year ending June thirtieth of that year. The commissioner shall have access to such records at reasonable times and places.

Disapproved February 14, 1985

Filed March 5, 1985

CHAPTER 691

HOUSE BILL NO. 1005
(Committee on Appropriations)

**PERSONAL PROPERTY TAX REPLACEMENT
APPROPRIATION**

AN ACT making an appropriation for the distribution of funds for the replacement of personal property taxes revenue.

VETO

March 20, 1985

The Honorable Roy Hausauer
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1005 provides for an \$11.9 million increase over my budget recommendations. It is essential to remember that, even with the \$73 million in budget cuts I have recommended, the State will be spending approximately \$100 million more than it will take in over the next biennium. To add to that spending will create major problems two years from now.

My budget recommendations, recognizing the difficulties faced by political subdivisions, contained a 16% increase in aid for them. This bill would result in a 38% increase. It is clearly in excess of what the State can afford and is unacceptable.

Therefore, I veto House Bill 1005. I am doing so immediately so that the Legislature will have the opportunity to enact a bill which is consistent with my budget recommendations.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE 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 replacement of personal property taxes, for the biennium beginning July 1, 1985, and ending June 30, 1987, as follows:

Grants, benefits, and claims	\$ 44,540,000
Total general fund appropriation	\$ 44,540,000

SECTION 2. DISTRIBUTION. The distribution of funds appropriated under section 1 of this Act shall be made in accordance with the formula for personal property tax replacement payments as provided for in section 57-58-01. During the year ending June 30, 1986, such payments shall not exceed one-half of the total appropriation provided for in this Act.

SECTION 3. PRORATION. Notwithstanding the provisions of section 57-58-01, which contains the formula for personal property tax replacement payments, the payments shall not exceed the amounts as set forth in this Act. If the appropriation provided for in this Act in any fiscal year is less than the amount determined by applying the formula as contained in section 57-58-01, the director of the office of management and budget shall pay only the amount of funds available under this Act. Under such circumstances, a method of proration shall be used that provides each eligible recipient the same proportion of these funds as the percent share of total funds it would have received under the application of the formula provided for in section 57-58-01.

Disapproved March 20, 1985

Filed March 25, 1985

CHAPTER 692

HOUSE BILL NO. 1375
(Representative Moore)
(Senator Adams)

RETAILERS' DEDUCTIONS FOR SALES TAX COLLECTION

AN ACT to amend and reenact sections 57-39.2-12.1 and 57-40.2-07.1 of the North Dakota Century Code, relating to deductions to reimburse retailers for administrative expenses of collection of sales and use taxes.

VETO

March 22, 1985

The Honorable Roy Hausauer
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

During the 48th Legislative Assembly we first provided reimbursement for retailers who file monthly sales and use tax reports. We provided reimbursement in amounts of up to \$1,000 per year. Prior to that time, retailers were not reimbursed at all. Many other states still provide no reimbursement.

This bill would raise that amount and would have a negative revenue impact of up to \$785,000. Much of that would go to retailers outside of North Dakota.

While higher compensation for retailers is a worthwhile goal, at this time of extremely tight revenues, it is inappropriate.

Therefore, I veto House Bill 1375.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer who pays the estimated total tax due under section 57-39.2-12 within the time limitations prescribed may deduct and retain ~~one and one-half~~ two percent of the tax due.
2. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~two one hundred fifty~~ ten dollars per ~~quarterly~~ monthly period for each business location which has been issued a sales or use tax permit by the commissioner.
3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the commissioner upon request.

SECTION 2. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer who pays the estimated total tax due under section 57-40.2-07 within the time limitations prescribed may deduct and retain ~~one and one-half~~ two percent of the tax due.
2. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~two one hundred fifty~~ ten dollars per ~~quarterly~~ monthly period for each business

location which has been issued a sales or use tax permit by the commissioner.

3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the commissioner upon request.

Disapproved March 22, 1985

Filed April 9, 1985

CHAPTER 693

HOUSE BILL NO. 1305
(Representatives Unhjem, Larson, Dotzenrod)
(Senators Krauter, Parker, Kilander)

REVOLVING CHARGE ACCOUNT FEES AND CHARGES

AN ACT to amend and reenact sections 51-14-02 and 51-14-03 of the North Dakota Century Code, relating to the minimum fees and credit service charges allowed for revolving charge account agreements; and to repeal section 51-14-04 of the North Dakota Century Code, relating to the effective date of the chapter.

VETO

March 22, 1985

The Honorable Roy Hausauer
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

Almost every North Dakota retailer would, with or without this bill, stay below the 18% interest rate on revolving charge accounts.

Basically, it is the low and middle income citizens, who must buy on credit, who would lose protection under this bill. If it is necessary to raise allowable interest rates, it is equally important that there be some legal restraint on those rates. This bill removes all such restraints. If a bill were presented to me which increased the amount of interest allowed, with a reasonable maximum amount, I would sign the bill. This bill does not do so.

Therefore, I veto House Bill 1305.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Section 51-14-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-14-02. Contents of revolving charge agreements - Requirements for delivery of monthly statements. Every revolving charge agreement shall be in writing and shall be signed by the retail buyer. A The retail seller shall deliver or mail a copy of any such the agreement shall be delivered or mailed to the retail buyer by the retail seller prior to before the date on which the first payment is due thereunder. Such agreements shall The agreement must state the amount and rate of the credit service charge to be charged and paid pursuant thereto. Such The agreement must set forth the credit service charge shall be set forth in such reveiving charge agreement in terms of a monthly percentage rate or minimum fee 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 the 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 The statement shall recite the following must:

1. The Specify the unpaid balance under the revolving charge agreement at the beginning or end of the period.
2. An identification of Identify 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 Specify the payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period.
4. The Specify the amount of the credit service charge, if any, and also the percentage annual simple interest equivalent of such that amount or when a minimum fee is charged, the amount of that fee.

5. A Contain a legend to the effect that the retail buyer may at any time pay ~~his~~ the 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.

SECTION 2. AMENDMENT. Section 51-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-14-03. Limitation of credit ~~Credit~~ service charge. A seller may, in a revolving charge agreement, contract for and, if so contracted for, the seller or holder thereof may charge, receive, and collect ~~the a credit service charge authorized by this section.~~ The service charge shall not exceed one and one-half percent per month computed on the outstanding indebtedness from month to month. In the event as agreed upon between the buyer and seller. If any payment by a buyer is insufficient to pay both the credit service charge and that portion of the outstanding indebtedness then due, ~~such payments shall~~ the payment must first be applied to the credit service charge then due.

SECTION 3. REPEAL. Section 51-14-04 of the North Dakota Century Code is hereby repealed.

Disapproved March 22, 1985

Filed April 9, 1985

CHAPTER 694

HOUSE BILL NO. 1335
(Unhjem)

**HUMAN SERVICE CENTER AND STATE HOSPITAL
RECORD TRANSFERS**

AN ACT to amend and reenact sections 25-01.1-06, 25-01.1-13, 25-03.1-43, and 50-06-15 of the North Dakota Century Code, relating to the transfer of client and patient records between regional human service centers, and between a regional human service center and the state hospital.

VETO

April 1, 1985

The Honorable Roy Hausauer
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

As amended, House Bill 1335 accomplishes exactly the opposite of what was intended by the bill's sponsor and the opposite of what is in the best interest of clients of human service centers and patients of the state hospital.

A very important function of human service centers is to provide after care and follow up mental health services and treatment to patients discharged from the state hospital. Another important function is to provide histories, diagnostic evaluations and

diagnostic information regarding clients admitted to the state hospital.

While I fully understand and appreciate the need for confidentiality of these records, it is also important to recognize that professional judgment and "need to know" are exercised in situations where the best interest of the client or patient dictates. This information exchange must be limited to an exchange within the human service system under carefully prescribed regulations.

Patients leaving the state hospital have fallen between the cracks due to the inability of the hospital to alert human service centers of an impending discharge and to give other information that is vital to follow up care. These patients, then, often return to the hospital because of the lack of such care, including the lack of proper medication. That has resulted in additional trauma and expense to the patient that probably could have been avoided.

This bill would limit access to records of mentally ill patients and clients by those who most need that information to properly care for them.

Therefore, I veto House Bill 1335.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Section 25-01.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.1-06. Supervising department to have access to institutions and to books and records of institutions. The supervising department shall have access to all the state institutions under its management and control, and to all books, accounts, vouchers, supplies, and equipment of each of the institutions so that the supervising department may familiarize itself with the conditions, needs and requirements of the institutions. All books, documents, and records relating to the concerns and business of such institutions except personal records of patients at all times shall be open to the examination of any citizen of this state. Personal records of patients shall be made available upon court order or in accordance with rules and regulations established by the supervising department, and, if the patient or guardian signs a written authorization of release, the patient's records may be transferred

upon request between the state hospital and a regional human service center or between regional human service centers.

SECTION 2. AMENDMENT. Section 25-01.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01.1-13. Supervising department to keep record of persons in institutions. The supervising department shall keep in its office a record showing:

1. The residence, sex, age, nativity, occupation, religion, civil condition, and date of entrance or commitment of every person, patient, or inmate in the institutions under its control and administration.
2. The date of discharge of every such person from the institutions, and whether such discharge was final.
3. The condition of the person at the time he left the institution.
4. If a person is transferred from one institution to another, to what institution transferred.
5. If a person, patient, or inmate of an institution shall die, the date and cause of death.

This information shall be furnished to the supervising department by the institutions under its control. Such other obtainable facts shall be furnished as the supervising department, from time to time, may require. No one shall have access to the records, except as authorized by the supervising department, or on the order of a court of record; provided, that if the patient or guardian signs a written authorization of release, the patient's records may be transferred upon request between the state hospital and a regional human service center or between regional human service centers.

SECTION 3. AMENDMENT. Section 25-03.1-43 of the North Dakota Century Code is hereby amended and reenacted to read 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 shall be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure, or except as necessary to permit the transfer of the records between the state hospital and a regional human service center or between human service centers as authorized by the patient or guardian's written release and consent. All information and records shall be available to the court and except as otherwise provided shall be disclosed

under regulations established by the state department of health 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, his 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.

SECTION 4. AMENDMENT. Section 50-06-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-15. Disclosure of information contained in records - Penalty. It shall be a class A misdemeanor for any person to disclose, authorize, or knowingly permit, participate in, or acquiesce in the disclosure of any records or information concerning persons applying for or receiving assistance or services under any program administered by or under the supervision and direction of the department when such information is derived directly or indirectly from records, papers, files, or communications received in the course of the administration of any such program or in the performance of official duties, except that such records and information may be used in the administration of any such program, may be transferred upon the patient or guardian's written authorization of release and upon request between regional human service centers and between a regional human service center and the state hospital, and may be used as specifically authorized by the rules and regulations of the department.

Disapproved April 1, 1985

Filed April 9, 1985

CHAPTER 695

HOUSE BILL NO. 1408
(Representative Strinden)
(Senator Nething)

LEGAL COUNSEL FOR LEGISLATIVE BRANCH

AN ACT to create and enact a new subsection to section 54-35-02 of the North Dakota Century Code, to provide that the legislative council may appoint or retain legal counsel to protect the interests of the legislative branch in actions and proceedings.

VETO

April 1, 1985

The Honorable Roy Hausauer
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

In 1890, The North Dakota legislature first prescribed the duties of the Attorney General. Those duties, in the context of House Bill 1408, remain the same today. (See Section 54-12-01 of the North Dakota Century Code). They include: To appear for and represent the state before the Supreme Court in all cases in which the state is interested as a party; to institute and prosecute all actions and proceedings in favor or for the use of the state and to appear and defend all actions and proceedings against any state officer.

In 1902, in language too clear to misconstrue, the legislature stated:

It is the intention of this Act to make the Attorney General, his assistants, and the state's attorney the only public prosecutor in all cases civil and criminal, wherein the state, or county, is a party to the action. 1901 N.D. Sess. Laws 178.

And the North Dakota Supreme Court has held:

"It seems to obvious for discussion that the framers of the Constitution, in providing for the election of these officers [Governor and Attorney General] by the people, thereby reserved unto themselves the right to have the inherent functions theretofore pertaining to said officers discharged only by persons elected as therein provided." The clear implication of this language is that the legislature has no constitutional power to abridge the inherent powers of the attorney general despite the fact that the constitution provides that the "duties of the . . . attorney general . . . shall be as prescribed by law." State v. Erickson, 7 N.W.2d 865, 867 (N.D. 1943).

The Attorney General has the necessary staff and resources to protect the legal interests of this state. Adding yet another legal staff would be an additional drain on the budget, duplicative and counter-productive. It could also lead to internal disputes, with different branches of state government pursuing different ends or different means to the same end.

The legal interests of this state are best protected by having a single office pursue all legal matters on behalf of the state.

Therefore, I veto House Bill 1408.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. A new subsection to section 54-35-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Upon approval of two-thirds of the members of the legislative council, to appoint or retain legal counsel to appear in, commence, prosecute, defend, or intervene in

any action, suit, matter, cause, or proceeding in any court or agency when deemed necessary or advisable to protect the official interests of the legislative branch of state government. The provisions of section 54-12-08 do not apply to persons appointed or retained pursuant to this subsection.

Disapproved April 1, 1985

Filed April 9, 1985

CHAPTER 696

HOUSE BILL NO. 1638
(A. Hausauer)

COAL SEVERANCE TAX RATE

AN ACT to amend and reenact section 57-61-01 of the North Dakota Century Code, to make permanent the rate of the coal severance tax in effect on July 1, 1987.

VETO

April 16, 1985

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1638 would have no impact on revenues for the 1985-87 biennium because of the delayed effective date.

Nevertheless, it is not wise policy to pass legislation which would tend to limit the options of succeeding legislative sessions. It is also not wise policy to provide tax breaks without regard to future revenue needs.

I am not an advocate of the current approach to coal taxation, and the entire area of coal taxation needs thorough review. However, until that review is accomplished this measure may only cloud the issue.

Therefore, I veto House Bill 1638.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Section 57-61-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-01. Severance tax upon coal - Imposition - Computation of increases - In lieu of sales and use taxes - Payment to the tax commissioner. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax in an amount to be determined as follows:

1. Eighty-five cents per ton of two thousand pounds [907.18 kilograms]; and
2. For every four point increase in the index of wholesale prices for all commodities prepared by the United States department of labor, bureau of labor statistics, the amount of the severance tax provided in subsection 1 shall be increased one cent per ton of two thousand pounds [907.18 kilograms]. For the purposes of this computation, a fractional point increase shall be disregarded if less than one-half point and treated as one full point if one-half point or more. The state tax commissioner shall determine such increases based upon increases in the wholesale price index from the level of such index as of June 1979 to the level of such index as of December 1979 and of May and November of each year thereafter, and any increases based upon the level of the index in May shall be effective on and after the following July first and any increases based upon the level of the index in November shall be effective on and after the following January first. At no time shall the amount of the severance tax be reduced. If the wholesale price index declines, the severance tax shall remain at the highest level determined prior to such decline, and shall remain at such level until further increases are warranted because of further increases in the wholesale price index beyond the point at which the last increase was determined. Notwithstanding the other provisions of this section, the rate of the severance tax as determined pursuant to this section which is effective on July 1, 1987, shall remain the rate in effect for all coal severed after July 1, 1987.

Such severance tax shall be in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit such tax for each month within twenty-five days after the end of each month, to the state tax commissioner upon such reports and forms as the tax commissioner shall deem necessary. If the method of determining increases in the amount of the severance tax provided in subsection 2 is for any reason held to be invalid, such decision shall not affect the validity of the amount of the tax provided in subsection 1.

Disapproved April 16, 1985

Filed April 17, 1985

CHAPTER 697

SENATE BILL NO. 2119
(Committee on State and Federal Government)
(At the request of the Department of Veterans' Affairs)

MEMORIAL DAY OBSERVANCE

AN ACT to amend and reenact sections 1-03-01 and 1-03-02 of the North Dakota Century Code, relating to the date of observance of Memorial Day holiday.

VETO

March 22, 1985

The Honorable Ruth Meiers
President of the Senate
Senate Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Lieutenant Governor Meiers:

I recognize there is a significant division among veterans on this issue. Even though I am a veteran, I have tried to make this decision on an objective basis.

In making my decision, I realized that it is important that North Dakotans join other Americans in honoring veterans. Having a different day from other Americans will only serve to create problems for families and businesses with ties outside this State.

Additionally, it is important that those of us who need to travel long distances to spend Memorial Day with families and friends have the extra time to travel and be together.

Finally, while I realize that it is impossible to legislate patriotism, those who truly wish to observe Memorial Day will be better able to do so under the current law.

Therefore, I veto Senate Bill 2119.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Subsection 5 of section 1-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The ~~last Monday in~~ thirtieth day of May, which is Memorial Day.

SECTION 2. AMENDMENT. Section 1-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1-03-02. When day following holiday shall be a holiday. If the first day of January, the thirtieth day of May, the fourth day of July, the eleventh day of November, or the twenty-fifth day of December falls upon a Sunday, the Monday following shall be the holiday.

Disapproved March 22, 1985

Filed April 9, 1985

CHAPTER 698

SENATE BILL NO. 2072
(Legislative Council)
(Interim Government Reorganization Committee)

MEMBERSHIP OF VARIOUS STATE BOARDS

AN ACT to amend and reenact sections 15-01-01, 54-52-03, and 57-13-01 of the North Dakota Century Code, relating to the membership of the board of university and school lands, the public employees retirement board, and the state board of equalization; and to provide an effective date.

VETO

March 29, 1985

The Honorable Ruth Meiers
President of the Senate
Senate Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Madam President:

The Tax Commissioner has been a member of the Board of Equalization since 1923. The system has worked well.

More than any other elected official, the Tax Commissioner has the expertise needed to decide tax questions on the Board of Equalization.

Clearly, the person who holds that office belongs on the chief tax board of this state.

Therefore, I veto Senate Bill 2072.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Section 15-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-01-01. Board - Membership - Officers. The governor, secretary of state, state ~~auditor~~ treasurer, attorney general, and superintendent of public instruction ~~shall constitute~~ comprise the "~~board~~ board of university and school ~~lands~~" lands. The governor ~~shall be~~ is the president, the secretary of state ~~shall be~~ is the vice president, and the commissioner of university and school lands ~~shall be~~ is the secretary of the board. In the absence of the commissioner at any meeting of the board, the deputy commissioner of university and school lands shall act as secretary. When acting as the board of university and school lands, the members of the board shall act in person and shall not be represented by any assistant, clerk, or deputy.

SECTION 2. AMENDMENT. Section 54-52-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-03. Governing authority. A state agency is hereby created to constitute the governing authority of the system to consist of a board of five persons known as the retirement board. No more than one member of the board shall be in the employ of a single department, institution, or agency of the state or in the employ of political subdivisions.

1. One member of the board shall be appointed by the governor to serve a term of five years. The appointee shall be a North Dakota citizen who is not a state, or school district employee and who by experience is familiar with money management. The citizen member shall be chairman of the board.
2. One member of the board shall be appointed by the attorney general from ~~his~~ the attorney general's legal staff and shall serve a term of five years.
3. Three board members shall be elected from among the participating members. The initial elected members shall be elected for terms which shall expire two years, three years, and four years after the date of establishment.

Future members shall be elected to a five-year term, pursuant to an election called for by the board.

4. The chairman of the board shall receive fifty dollars per day for the actual time devoted ~~by him~~ to the duties of ~~his~~ the office and each of the other members of the board shall receive an honorarium of fifty dollars for each month during which the board has been in session. This shall be in addition to any other pay or allowance due the chairman or a member, plus an allowance for expenses they may incur through service on the board.
5. A board member shall serve a five-year term and until ~~his~~ the member's successor qualifies. Each board member shall be entitled to one vote, and three of the five board members shall constitute a quorum. Three votes shall be necessary for resolution or action by the board at any meeting.
6. The ~~state auditor,~~ the state health officer, and the commissioner of banking and financial institutions shall be ex officio, nonvoting, and advisory members of the board.

SECTION 3. AMENDMENT. Section 57-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-13-01. Membership of board. The governor, state treasurer, state auditor, commissioner of agriculture, and ~~state tax commissioner shall constitute~~ secretary of state ~~comprise~~ the state board of equalization. The governor ~~shall be~~ is the chairman of the board and the tax commissioner is the secretary of the board.

SECTION 4. EFFECTIVE DATE. Section 1 of this Act is contingent on the passage of Senate Concurrent Resolution No. 4005 by the forty-ninth legislative assembly and approval of that resolution by the electors of this state. If the resolution is not approved by the electorate, section 1 of this Act is of no force and effect. If section 1 of this Act takes effect, it is effective on and after January 1, 1987.

Disapproved March 29, 1985

Filed April 9, 1985

CHAPTER 699

SENATE BILL NO. 2300
(Senators Holmberg, Kilander)
(Representatives Hughes, Unhjem, Hoffner)

SALES TAX EXEMPTION FOR HEATING GAS

AN ACT to amend and reenact sections 57-39.2-02.1 and 57-40.2-02.1 of the North Dakota Century Code, relating to the rate of sales and use taxes on gas used primarily for heating or cooling purposes in residential or commercial buildings.

VETO

April 1, 1985

The Honorable Ruth Meiers
President of the Senate
Senate Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Madam President:

Senate Bill 2300 does accomplish a worth while purpose by equalizing the tax on natural gas and other energy taxes. In addition, because of the delayed effective date, it would have no impact on revenues for the 1985-87 biennium.

Nevertheless, it is not wise policy to pass legislation which would tend to limit the options of succeeding legislative sessions. It is also not wise policy to provide tax breaks without regard for future revenue needs.

The good ends sought in this bill can be better determined by the 1987 legislative assembly, when the revenue picture for the 1987-89 biennium will be far more clear.

Therefore, I veto Senate Bill 2300.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Section 57-39.2-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-02.1. Sales tax imposed.

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 and irrigation equipment used exclusively for agricultural purposes, except as provided in subsection 4 for sales of natural gas, and except as otherwise expressly provided in this chapter, there is imposed a tax of four 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 and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of steam other than steam used for processing agricultural products, gas, or communication services.
 - 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 playing of any machine for amusement or entertainment in response to the use of a coin.
 - 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.
2. There is hereby imposed a tax of three percent upon the gross receipts of retailers from all sales at retail 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 and irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within the state of North Dakota to consumers or users.
 3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to April 1, 1983, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.
 4. There is hereby imposed a tax upon the gross receipts of retailers from all sales at retail of gas used primarily for the purpose of heating or cooling in residential or commercial buildings at the rate provided in this subsection.
 - a. The rate of the tax is four percent through June 30, 1987.
 - b. The rate of the tax is two percent after June 30, 1987.

SECTION 2. AMENDMENT. Section 57-40.2-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-02.1. Use tax imposed.

1. Except as otherwise expressly provided in subsection 2 for purchases of mobile homes used for residential or business purposes and for purchases of farm machinery and irrigation equipment used exclusively for agricultural purposes or in subsection 4 for sales of natural gas, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of four percent of the purchase price of such property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally

- purchased for storage, use, or consumption in this state at the rate of four percent of the fair market value of such property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of such mobile homes used for residential or business purposes and of such farm machinery and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.
 3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to April 1, 1983, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.
 4. There is hereby imposed a tax upon the storage, use, or consumption in this state of gas used primarily for the purpose of heating or cooling in residential or commercial buildings at the rate provided in this subsection.
 - a. The rate of the tax is four percent through June 30, 1987.
 - b. The rate of the tax is two percent after June 30, 1987.

Disapproved April 1, 1985

Filed April 9, 1985

CHAPTER 700

SENATE BILL NO. 2159
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFITS

AN ACT to amend and reenact subsection 1 of section 52-06-04 and section 52-06-05 of the North Dakota Century Code, relating to unemployment compensation weekly benefit amount and benefit duration.

VETO

April 16, 1985

The Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Current law provides that on July 1, 1985, the maximum weekly benefit amount for job insurance payments will be 67 percent of the average weekly wage in North Dakota. Senate Bill 2159 would reduce and freeze the maximum weekly benefit amount permanently, regardless of what happens to the economy, prices or wages.

The 1983 Legislature already took action to cut benefit payments substantially. The cuts in this bill go beyond what is needed and place an unfair burden on the worker.

Very early in the legislative session, I appointed a committee to try to develop a compromise position that everyone could support. Unfortunately, a final compromise was not accepted by the Legislature.

I am directing Job Service North Dakota to continue a strong program of screening recipients who draw job insurance benefits and to begin an immediate review of the entire job insurance program to determine any long-range improvements that can be made. I recognize the need for a realistic tax level for the job insurance program, but I also recognize the need for an adequate program of job insurance benefits.

Therefore, I veto Senate Bill 2159.

Sincerely,

GEORGE A. SINNER
Governor

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

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The procedures, provisions, and conditions of this section shall determine the "weekly benefit amount" of those individuals who establish a benefit year on and after July 1, 1973:
 - a. For the purpose of this section the bureau shall each year, on or before the first day of June, determine the average annual wage paid to insured workers and, from that determination, an "average weekly wage", by the following computation:

The total wages reported on contribution reports for the preceding calendar year shall be divided by the average monthly number of covered workers, whose number shall be determined by dividing by twelve the total covered employment reported on contribution reports for the preceding calendar year, and the quotient obtained by dividing the total wages by the average monthly number of covered workers shall be the average annual wage; and such quotient shall be divided by fifty-two and the amount thus obtained, rounded to the nearest cent, shall be the "average weekly wage".

b. An individual's "weekly benefit amount" shall be an amount equal to one fifty-second (if not a multiple of one dollar, to be computed to the next lower multiple of one dollar) of the individual's total wages for insured work paid during the two quarters of the individual's base period in which the individual's wages were the highest, however, if such amount is less than the "minimum weekly benefit amount" the individual shall be monetarily ineligible for benefits. The "minimum weekly benefit amount" shall be ~~eighteen~~ fifteen times the current federal minimum hourly wage provided under the Fair Labor Standards Act [29 U.S.C. 206]. The "minimum weekly benefit amount", if not a multiple of one dollar, shall be rounded to the next lower multiple of one dollar. The "maximum weekly benefit amount" shall be as hereinafter provided-

- (1) ~~Sixty-two~~ sixty percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar, shall be the "maximum weekly benefit amount" that can be paid to any individual whose benefit year commences on or after July 1, 1983, 1985. However, for the period beginning July 1, 1985, and thereafter, the "maximum weekly benefit amount" may not exceed one hundred seventy-five dollars.
- (2) ~~Sixty-five~~ percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar, shall be the "maximum weekly benefit amount" that can be paid to any individual whose benefit year commences on or after July 1, 1984.
- (3) ~~Sixty-seven~~ percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar, shall be the "maximum weekly benefit amount" that can be paid to any individual whose benefit year commences on or after July 1, 1985.

SECTION 2. AMENDMENT. Section 52-06-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-05. Maximum potential benefits. Any otherwise eligible individual shall be 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
<u>1-50 to 1-75</u>	<u>12</u>
<u>1-76 to 1-95</u>	<u>14</u>
<u>1-96 to 2-15</u>	<u>16</u>
<u>2-16 to 2-35</u>	<u>18</u>
<u>2-36 to 2-55</u>	<u>20</u>
<u>2-56 to 2-75</u>	<u>22</u>
<u>2-76 to 2-95</u>	<u>24</u>
<u>2-96 or more</u>	<u>26</u>
<u>1.50 to 1.80</u>	<u>14</u>
<u>1.81 to 2.11</u>	<u>16</u>
<u>2.12 to 2.42</u>	<u>18</u>
<u>2.43 to 2.73</u>	<u>20</u>
<u>2.74 to 3.04</u>	<u>22</u>
<u>3.05 to 3.22</u>	<u>24</u>
<u>3.23 or more</u>	<u>26</u>

Disapproved April 16, 1985

Filed April 17, 1985

CHAPTER 701

SENATE BILL NO. 2436
(Senators Satrom, Lips, Reiten)
(Representatives Martinson, G. Berg, Payne)

PUBLIC DOCUMENT PRINTING

AN ACT to amend and reenact sections 46-02-04 and 46-02-09 of the North Dakota Century Code, relating to the classes and definitions of printing and duplicating public documents.

VETO

April 16, 1985

The Honorable Ben Meier
Secretary of State
First Floor, State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

Senate Bill 2436 attempts to define and make distinctions between the terms "printing" and "duplicating" which are unclear and confusing. It would place arbitrary limits upon State printing and duplicating without regard to efficient or cost-effective considerations.

The Central Duplicating Service has, in the past, exceeded the limits mandated by this bill and has done so because there has been a cost savings and better service for the State.

While it is neither wise nor beneficial to enlarge printing and duplicating services excessively, neither is it wise to place arbitrary limits upon those services. State government is not in

the business of competing with private enterprise, but it is charged with utilizing tax dollars as effectively and efficiently as possible. This bill would prevent that.

Therefore, I veto Senate Bill 2436.

Sincerely,

GEORGE A. SINNNER
Governor

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

SECTION 1. AMENDMENT. Section 46-02-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-04. Classes of printing - Contracts - Definition. The printing of the state is hereby divided into classes as follows:

1. The printing of legislative documents for the use of the legislative assembly shall constitute the first class. For the purposes of this subsection, the words "legislative documents" shall 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 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 the third class. This class does not include the official budget report.
4. The printing and binding of the volumes of laws, with such legislative resolutions as shall be included in said volumes, shall constitute the fourth class.
5. Repealed by S.L. 1979, ch. 187, § 108.
6. All printing not included in the foregoing classes shall constitute the sixth class.

Separate contracts for each of classes 3 and 4 shall be let by the office of management and budget under competitive bidding in accordance with the provisions of this title and at a cost and price not in excess of the cost and price as provided for in the Franklin Printing Catalogue. Contracts for classes 1 and 2 shall 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, but at a cost and price not in excess of the cost and price as provided for in the Franklin Printing Catalogue. For purposes of this section, the term "printing" includes the use of process color printing, presses larger than eleven by seventeen inches [27.94 x 43.18 centimeters], die cutting, snap out forms, continuous forms, perfect binding, and the production in excess of ten thousand impressions of any page or fifty thousand impressions in the aggregate of items consisting of multiple pages.

SECTION 2. AMENDMENT. Section 46-02-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-09. Sixth-class items - When bids or quotations required - Costs determined - Definition. All work on sixth-class items amounting to three hundred dollars or over as determined by the Franklin Printing Catalogue, not done by the central duplicating service of the office of management and budget or by departments, institutions, or state offices with authorized duplicating ~~or printing~~ centers, or institutions with printing services or journalistic programs under the jurisdiction of the board of higher education, must be let by competitive bidding or by the solicitation of at least two quotations by the office of management and budget, or by the departments, institutions, or state offices authorized to bid their own printing needs. Printing items amounting to less than three hundred dollars may be given by the department head to the printer of his choice. All departments, institutions, or state offices shall submit requisitions for all printing to the office of management and budget. Departments, institutions, or state offices authorized to do their own bidding must attach the bids or quotations to their requisition for printing. Where practical, all departments, institutions, or state offices authorized to do their own bidding shall take advantage of annual contracts established by the office of management and budget. The office of management and budget shall determine and fix the reasonable maximum cost or price for such printing work. The maximum cost of the work shall not exceed Franklin Printing Catalogue prices. For purposes of this section, the term "duplicating" includes procedures used for bid preparation purposes and production of materials for the legislative branch. The level of duplicating services provided by the central duplicating division of the office of management and budget cannot be enlarged from that provided as of January 1, 1985, and cannot include printing.

Disapproved April 16, 1985

Filed April 17, 1985

INITIATED MEASURE, APPROVED

CHAPTER 702

RIGHT TO BEAR ARMS

An initiated measure to amend the Constitution of the State of North Dakota, preserving to the people the right to bear arms for lawful purposes.

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

SECTION 1. AMENDMENT. Section 1 of article I of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 1. All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

Approved November 6, 1984

236,596 to 58,582

NOTE: This was measure No. 3 on the general election ballot.

INITIATED MEASURE, DISAPPROVED

CHAPTER 703

JUNIOR COLLEGE CONTROL

An initiated measure to require the State Board of Higher Education to give up control and financial responsibility over Bismarck Junior College, Lake Region Community College at Devils Lake, and the University of North Dakota - Williston Center.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. The State Board of Higher Education shall not assume jurisdiction acquired under section 15-10-01.1 of the North Dakota Century Code, over all junior colleges and off-campus education centers that were established under Chapter 15-18 of the North Dakota Century Code, and all off-campus educational centers that were established under section 15-18-04.1 of the North Dakota Century Code. The board shall cease all negotiations with the governing bodies of these institutions for the transfer of the institutions' managerial responsibilities, real property and other assets to the state. If jurisdiction has been assumed by the board over all junior colleges and off-campus education centers acquired under section 15-10-01.1 of the North Dakota Century Code, the board shall relinquish jurisdiction to the original governing bodies of these institutions. If the transfer to the state has been completed, the board shall transfer the institutions' managerial responsibilities, real property and other assets, back to the original governing bodies of these institutions under the same terms and conditions of the original acquisition. Upon the transfer of all junior college or off-campus educational center responsibilities and property from the board to the original governing bodies of these institutions, the state board of higher education shall no longer maintain any financial or managerial responsibilities for Bismarck junior college, Lake Region community college or the university of North Dakota - Williston Center.

SECTION 2. AMENDMENT. Section 15-10-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-10-01. State board of higher education - Institutions administered by board. The state board of higher education shall have the control and administration of the following state educational institutions:

1. The state university and the school of mines at Grand Forks, with their substations.
2. The North Dakota state university of agriculture and applied science and the experiment station at Fargo, with their substations.
3. The school of science at Wahpeton.
4. The state normal schools and teachers colleges at Valley City, Mayville, Minot, and Dickinson.
5. The school of forestry at Bottineau.
6. And such other state institutions of higher education as may be established.

SECTION 3. A new section to chapter 15-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Community colleges authorized. The school board of any public school district comprising any city of the state having a population of more than five thousand, when authorized by a two-thirds vote of the electors voting thereon, may establish and maintain, in conjunction with the high school of the district, a department of community college work to consist of not more than two years of work beyond a four-year high school course.

SECTION 4. A new section to chapter 15-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Election to establish community college. The establishment and maintenance of a department of community college work may be authorized only at an election held pursuant to ten days' notice stating the time and place of the election and that such proposition is to be submitted to a vote at the election.

SECTION 5. AMENDMENT. Section 15-18-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-18-03. Tuition and fees in community college - Use of tuition and fee revenue - Duty of school board - Tax levy authorized - Maintenance of community college. On or before August fifteenth in each year, the school board of a public school district which maintains a community college shall determine the rate of tuition and fees required to be paid by all students attending the college, and these tuition and fee charges may be at a different rate for the students nonresident in the district than for the students resident in the district. The school board may adopt rules for classifying students as residents or nonresidents of the district for tuition purposes. Tuition and fee revenue may be used to retire bonds issued in accordance with section 15-55-18. Every public school district maintaining a community college under this chapter may levy a tax of not to exceed

sixteen mills, the proceeds of which shall be used for the maintenance and operation of the college. Of the sixteen mills which may be levied pursuant to this section, the first eight mills shall be levied upon the resolution of the local school board. Any mills to be levied above the initial eight mills must first be approved by the voters of the district. When submitting the question at the election, the board may specify a levy of less than the additional eight-mill limit authorized, and if the limited levy is approved by the voters, subsequent levies may not exceed the limited levy without another election authorizing a greater levy. No election may ever authorize a greater aggregate levy under this section than sixteen mills. The tax levy for the support of a community college shall be in addition to all other levies authorized by law for such school districts, and the proceeds of the levy shall be used exclusively for the support, operation, and maintenance of a community college.

SECTION 6. A new section to chapter 15-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Community college boards of control - Expenditures - Budget - Members - Terms - Compensation. The school board of any public school district maintaining a community college may appoint a board of control to direct the management and operation of the community college. The board of control may employ teachers and other personnel, prescribe courses of study, and purchase equipment and supplies and generally manage the community college. The board of control shall prepare and submit to the school board an annual budget for the operation of the community college and may approve the expenditure of funds, within the limitations of the budget, and perform such other functions as the school board may prescribe. The school board may approve, amend, or deny any decision made by the board of control. The board of control may appoint a secretary to keep the minutes and records of the board.

The board of control shall consist of five members. Each member of the board shall hold office subject to removal at the pleasure of the school board for a term of five years except that the five members first appointed under the authority of this section shall be appointed for the following terms: One for one year, one for two years, one for three years, one for four years, and one for five years as designated by the members of the school board. Any appointment to fill a vacancy shall be for the unexpired portion of the term. Members of the board of control shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties in the same manner and amounts as members of the school board.

SECTION 7. A new section to chapter 15-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Supervision of community colleges. The state board of higher education shall prepare and publish from time to time academic standards for community colleges, provide for their inspection, and

recommend for accrediting the academic courses of study which meet the prescribed standards. The state board of vocational education shall perform the same function as to trade courses offered by community colleges and shall prepare and publish from time to time vocational standards for community colleges, provide for their inspection, and make recommendations for accrediting the vocational courses which meet the prescribed standards.

SECTION 8. A new section to chapter 15-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Establishment of off-campus education center - Tuition and fees - Use of tuition and fee revenue. The school board of any school district which includes a city having a population of more than seven thousand five hundred, may enter into an agreement with a state-supported institution of higher education for the establishment and maintenance of an off-campus educational center offering college or university level courses, provided the agreement is approved by the state board of higher education. The school shall determine the tuition and fees to be paid by all students attending the off-campus educational center, regardless of their residence, and these charges may be at a different rate for the students nonresident in the district than for students resident in the district. Tuition and fee revenue may be used to retire bonds issued in accordance with section 15-55-18.

SECTION 9. AMENDMENT. Section 15-18-04.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-18-04.2. Tax levy for off-campus educational facilities - Election. For the purpose of maintaining and operating an off-campus educational center the school board may levy, upon its own resolution, eight mills. If it is found, after the board by resolution has levied its maximum eight mills, that additional funds are needed, the board may submit the question of an additional levy not to exceed eight mills, to the electors of the district at any regular or special school election within the district. If approved by sixty percent of the electors voting, the school board may proceed with the levy and collection of the tax. The total mills levied under this section may not exceed sixteen. The levy shall be in addition to all other mill levy limitations provided by law, and the proceeds shall be placed in a separate fund, accounted for separately, and used exclusively for the support, operation, and maintenance of the off-campus educational center. Expenditures may be made by the school board without going through the institution of higher education with whom an agreement has been entered.

SECTION 10. AMENDMENT. Section 15-18-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-18-05. County levy to aid community college or educational center authorized. The board of county commissioners of any county, or part

of a county, in which a community college or off-campus educational center of a state-supported institution of higher education has been established, or any county, or part of a county, adjacent thereto, may upon approval of the electors of such county at a countywide election, levy a tax of not exceeding five mills upon all property in the county, to aid any special school district having established a community college or off-campus educational center of a state-supported institution of higher education. The levy authorized by this section is over and above any mill levy limitation provided by law. After the approval of such levy, upon petition of five percent of the electors voting in the last preceding countywide election, the county commissioners shall submit the question to the continuance of the levy to the next countywide election, and if the majority of the electors vote to discontinue such levy, the levy shall be discontinued in subsequent years.

SECTION 11. AMENDMENT. Section 15-18-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-18-06. Proceeds of levy to be certified to special school district. The proceeds of any tax levy hereby authorized shall be certified quarterly to the clerk of any special school district having established a community college or off-campus educational center of a state-supported institution of higher education and shall be placed in a special community college fund or an off-campus center fund and shall be expended for the acquisition of property, construction, maintenance, and the operation of the community college or educational center of a state-supported institution of higher education.

SECTION 12. A new section to chapter 15-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

State aid for community colleges or educational centers. Each school district maintaining a community college or educational center operated by a state-supported institution of higher education meeting the standards and eligibility requirements prescribed in section 13 of this Act shall have appropriated on its behalf such amounts as are determined necessary by the legislative assembly, if the school district, city, or county shall levy taxes of not less than eight mills for the support of the community college or educational center in accordance with section 15-18-03, 15-18-04.2, or 15-18-05. Community colleges shall operate within the limits of their legislative appropriation. Before estimated income in excess of that included in the legislative appropriation acts can be spent by the community college, and before transfers between line items in the legislative appropriation acts can be made, the community college must receive emergency commission approval.

SECTION 13. A new section to chapter 15-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Standards for state aid - Review of budgets - Audit of expenditures. No school district maintaining a community college or educational center operated by a state-supported institution of higher education may receive payments as provided in section 12 of this Act or as otherwise specifically provided by law unless it was established and eligible to receive such payments on July 1, 1969, and meets either the academic standards prescribed by the state board of higher education or the vocational standards as prescribed by the state board of vocational education. The state board of higher education shall provide for an annual inspection of each community college or educational center operated by a state-supported institution of higher education to determine compliance with prescribed academic standards, and the state board of vocational education shall provide for an annual inspection of each community college or educational center operated by a state-supported institution of higher education to determine compliance with prescribed vocational standards. Each school district maintaining a community college or educational center shall annually submit a proposed institutional budget to the state board of public school education. The state board of public school education shall review such budgets, and the staff of the state board of vocational education shall provide such professional and clerical assistance as is required for such review. Two copies of each proposed biennial institutional budget, in the same format as prescribed by the office of the budget for the colleges and universities under the state board of higher education, shall also be submitted to the office of the legislative council for the information of the appropriations committees of the legislative assembly. In addition, each school district maintaining a community college or educational center shall at least biennially provide the legislative audit and fiscal review committee with an official audit of its expenditures and activities.

SECTION 14. A new section to chapter 15-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Method of payment. The chief administrative officer of each community college or educational center operated by a state-supported institution of higher education claiming state aid payments under section 12 of this Act, shall file vouchers with the office of management and budget to receive funds from its legislative appropriation. Other than amounts necessary to maintain operating cash balances, the community colleges must expend appropriated local funds before requesting revenues from the appropriated state moneys.

SECTION 15. AMENDMENT. Section 15-55-18 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-55-18. Bond issue for community colleges and off-campus educational centers. The school board of a school district having a community college or off-campus educational center as provided in chapter 15-18 may issue and sell tax-exempt bonds in an amount limited to

the cost of purchasing or constructing buildings, adding to or repairing or renovating existing buildings, furnishing or equipping these buildings, or operating and maintaining these buildings for its community college or off-campus educational center students. The total principal amount of the bonds may not exceed four million dollars. The bonds authorized by this section shall be retired from revenues of the buildings and facilities purchased or constructed under this section. The school board may also use tuition and fee revenue to retire these bonds. These bonds shall not become the general obligation of the school district or the state.

SECTION 16. REPEAL. Section 15-10-01.1 of the 1983 Supplement to the North Dakota Century Code and section 14 of chapter 192 of the 1983 Session Laws are hereby repealed.

Disapproved November 6, 1984

107,357 to 182,989

NOTE: This was measure No. 4 on the general election ballot.

REFERRED MEASURE, DISAPPROVED

CHAPTER 704

DAKOTA NORTHWESTERN UNIVERSITY — MINOT

Disapproval by referendum of House Bill No. 1500 of the Forty-eighth Legislative Assembly which provided a change in the name of "Minot State College" to the Dakota northwestern university.

Disapproved June 12, 1984

41,234 to 51,080

NOTE: This was measure No. 3 on the primary election ballot.

CONSTITUTIONAL AMENDMENTS, APPROVED

CHAPTER 705

COUNTY OFFICER REFERENCES

House Concurrent Resolution No. 3026, chapter 727, 1983 Session Laws, proposed by the Forty-eighth Legislative Assembly of the State of North Dakota, amending section 4 of article IX and section 17 of article X of the Constitution of the State of North Dakota, relating to references to the county superintendent of common schools and the county auditor.

STATEMENT OF INTENT

This amendment removes references to two county offices which are no longer constitutionally recognized but are provided for by law.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following amendments to section 4 of article IX and section 17 of article X of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1984, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 4 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 4. ~~The county superintendent of common schools, the chairman of the county board, and the county auditor~~ public officers designated by law shall constitute boards of appraisal and under the authority of the state board of university and school lands shall appraise all school lands within their respective counties which they may from time to time recommend for sale at their actual value under the prescribed terms and shall first select and designate for sale the most valuable lands.

SECTION 2. AMENDMENT. Section 17 of article X of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 17. No bond or evidence of indebtedness of the state ~~shall be~~ is valid unless ~~the same shall have it has~~ it has endorsed thereon a certificate, signed by the auditor and secretary of state showing that the bond or evidence of debt is issued pursuant to law and is within the debt limit. No bond or evidence of debt of any county, or bond of any township or other political subdivision ~~shall be~~ is valid unless ~~the same shall have it has~~ it has endorsed thereon a certificate signed by the ~~county auditor, or other~~ officer authorized by law to sign such certificate, stating that said bond, or evidence of debt, is issued pursuant to law and is within the debt limit.

Approved June 12, 1984

55,519 to 26,758

NOTE: This was measure No. 1 on the primary election ballot.

CHAPTER 706

LEGISLATIVE ASSEMBLY MEMBERS

House Concurrent Resolution No. 3028, chapter 728, 1983 Session Laws, proposed by the Forty-eighth Legislative Assembly of the State of North Dakota, creating eight new sections to article IV of the Constitution of the State of North Dakota, relating to the legislative assembly; to repeal sections 1 through 13, sections 16 through 18, and sections 22 through 24 of article IV of the Constitution of the State of North Dakota, relating to the legislative assembly; and to provide an effective date.

STATEMENT OF INTENT

This amendment creates eight new sections to article IV of the Constitution of the State of North Dakota providing for a Legislative Assembly that consists of a Senate and House of Representatives and establishes the terms of office and the allowable number of legislators in each house. The amendment also provides for the organization of legislative districts, reorganization based on one-man, one-vote principles, and restrictions on legislators serving in other state offices. The amendment also repeals sections 1 through 13 and sections 16 through 18, and sections 22 through 24 of article IV of the Constitution of the State of North Dakota, and provides that these changes will take effect on December 1, 1986.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed eight new sections to article IV and the repeal of sections 1 through 13, sections 16 through 18, and sections 22 through 24 of article IV of the Constitution of the State of North Dakota are agreed to and shall be submitted to the qualified electors of the state of North Dakota at the 1984 primary election, in accordance with the provisions of section 45 of the present article IV of the Constitution of the State of North Dakota.

SECTION 1. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members. These houses are jointly designated as the legislative assembly of the state of North Dakota.

SECTION 2. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The legislative assembly shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators. The districts thus ascertained and determined after the 1990 federal decennial census shall continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

The legislative assembly shall guarantee, as nearly as is practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates. A senator and at least two representatives must be apportioned to each senatorial district and be elected at large or from subdistricts from those districts. The legislative assembly may combine two senatorial districts only when a single member senatorial district includes a federal facility or federal installation, containing over two-thirds of the population of a single member senatorial district, and may provide for the election of senators at large and representatives at large or from subdistricts from those districts.

SECTION 3. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate, as nearly as is practicable, are elected biennially.

SECTION 4. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Senators must be elected for terms of four years and representatives for terms of two years.

SECTION 5. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Each person elected to the legislative assembly must be, on the day of the election, a qualified elector in the district from which the member was chosen and must have been a resident of the state for one year immediately prior to that election.

SECTION 6. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

While serving in the legislative assembly, no member may hold any full-time appointive state office established by this constitution or designated by law. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office which has been created, or to any office for which the compensation has been increased, by the legislative assembly during that term.

SECTION 7. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The terms of members of the legislative assembly begin on the first day of December following their election.

The legislative assembly shall meet at the seat of government in the month of December following the election of the members thereof for organizational and orientation purposes as provided by law and shall thereafter recess until twelve noon on the first Tuesday after the third day in January or at such other time as may be prescribed by law but not later than the eleventh day of January.

No regular session of the legislative assembly may exceed eighty natural days during the biennium. The organizational meeting of the legislative assembly may not be counted as part of those eighty natural days, nor may days spent in session at the call of the governor or while engaged in impeachment proceedings, be counted. Days spent in regular session need not be consecutive, and the legislative assembly may authorize its committees to meet at any time during the biennium. As used in this section, a "natural day" means a period of twenty-four consecutive hours.

Neither house may recess nor adjourn for more than three days without consent of the other house.

SECTION 8. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The house of representatives shall elect one of its members to act as presiding officer at the beginning of each organizational session.

SECTION 9. REPEAL. Sections 1 through 13, sections 16 through 18, and sections 22 through 24 of article IV of the Constitution of the State of North Dakota are hereby repealed.

SECTION 10. EFFECTIVE DATE. If approved by the voters, this measure becomes effective December 1, 1985.

Approved June 12, 1984

46,500 to 34,039

NOTE: This was measure No. 2 on the primary election ballot.

CHAPTER 707

LEGISLATIVE ASSEMBLY PROCEDURES

House Concurrent Resolution No. 3029, chapter 730, 1983 Session Laws, proposed by the Forty-eighth Legislative Assembly of the State of North Dakota, creating five new sections to article IV of the Constitution of the State of North Dakota, relating to the legislative assembly; to repeal sections 20 and 21 and sections 25 through 45 of article IV of the Constitution of the State of North Dakota, relating to the legislative assembly; and to provide an effective date.

STATEMENT OF INTENT

This amendment creates five new sections to article IV of the North Dakota Constitution establishing basic procedures for the operation of the legislative assembly. It further provides that all meetings of the legislative assembly and its committees be open and public, and provides a method for the legislative assembly to propose constitutional amendments to be submitted to the voters for approval or disapproval. The amendment also repeals sections 20 and 21 and sections 25 through 45 of the present article IV of the Constitution of the State of North Dakota, and provides that these changes will take effect on December 1, 1986.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new sections of article IV and the repeal of the present section 20 and 21 and sections 25 through 45 of article IV of the Constitution of the State of North Dakota are agreed to and shall be submitted to the qualified electors of the state of North Dakota at the 1984 general election, in accordance with the provisions of section 45 of the present article IV of the Constitution of the State of North Dakota.

SECTION 1. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

A majority of the members elected to each house constitutes a quorum. A smaller number may adjourn from day to day and may compel

attendance of absent members in a manner, and under a penalty, as may be provided by law.

Each house is the judge of the qualifications of its members, but election contests are subject to judicial review as provided by law. If two or more candidates for the same office receive an equal and highest number of votes, the secretary of state shall choose one of them by the toss of a coin.

Each house shall determine its rules of procedure, and may punish its members or other persons for contempt or disorderly behavior in its presence. With the concurrence of two-thirds of its elected members, either house may expel a member.

SECTION 2. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

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 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. 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. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

All sessions of the legislative assembly, including the committee of the whole and meetings of legislative committees, must be open and public.

SECTION 4. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Members of the legislative assembly are immune from arrest during their attendance at the sessions, and in going to or returning from the sessions, except in cases of felony. Members of the legislative assembly may not be questioned in any other place for any words used in any speech or debate in legislative proceedings.

SECTION 5. A new section to article IV of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Any amendment to this constitution may be proposed in either house of the legislative assembly, and if agreed to upon a roll call by a majority of the members elected to each house, must be submitted to the electors and if a majority of the votes cast thereon are in the affirmative, the amendment is a part of this constitution.

SECTION 6. REPEAL. Sections 20 and 21 and sections 25 through 45 of the present article IV of the Constitution of the State of North Dakota are hereby repealed.

SECTION 7. EFFECTIVE DATE. If approved by the voters, this measure becomes effective December 1, 1986.

Approved November 6, 1984

177,733 to 86,792

NOTE: This was measure No. 2 on the general election ballot.

CONSTITUTIONAL AMENDMENT, DISAPPROVED

CHAPTER 708

STATE TREASURER REMOVAL

House Concurrent Resolution No. 3011, chapter 729, 1983 Session Laws, proposed by the Forty-eighth Legislative Assembly of North Dakota, amending sections 12 and 13 of article V and section 12 of article X of the Constitution of the State of North Dakota, relating to the office of state treasurer; to repeal section 15 of article XII of the Constitution of the State of North Dakota, relating to the duties of state treasurer on issuance of legal tender by banks in the state; and to provide an effective date.

STATEMENT OF INTENT

This amendment removes the state treasurer as an elected constitutional officer effective January 1, 1989. The legislative assembly intends that the duties now performed by the state treasurer would be performed by other agencies as provided by law.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendments to sections 12 and 13 of article V and section 12 of article X of the Constitution of the State of North Dakota, and the repeal of section 15 of article XII of the Constitution of the State of North Dakota, are agreed to and shall be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1984, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 12 of article V of the Constitution of the State 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 tax commissioner shall be elected on a no-party ballot and he shall be nominated and elected in the manner now provided for the nomination and election of the superintendent of public instruction.

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 2. AMENDMENT. Section 13 of article V of the Constitution of the State 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 3. AMENDMENT. Section 12 of article X of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 12.

1. All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer proper official as provided by law, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature; provided, however, that there is hereby appropriated the necessary funds required in the financial transactions of the Bank of North Dakota, and required for the payment of losses, duly approved, payable from the state hail insurance fund, state bonding fund, and state fire and tornado fund, and required for the payment of compensation to injured employees or death claims, duly approved, payable from the workmen's compensation fund, and required for authorized investments made by the board of university and school lands, and required for the financial operations of the state mill and elevator association, and required for the payment of interest and principal of bonds and other fixed obligations of the state, and required for payments required by law to be paid to beneficiaries of the teachers' insurance and retirement fund, and required for refunds made under the provisions of the Retail Sales Tax Act, and the State Income Tax Law, and the State Gasoline Tax Law, and the Estate and Succession Tax Law, and the income of any state institution derived from permanent trust funds, and the funds allocated under the law to the state highway department and the various counties for the construction, reconstruction, and maintenance of public roads.

This constitutional amendment shall not be construed to apply to fees and moneys received in connection with the licensing and organization of physicians and surgeons, pharmacists, dentists, osteopaths, optometrists, embalmers, barbers, lawyers, veterinarians, nurses, chiropractors, accountants, architects, hairdressers, chiropodists, and other similarly organized, licensed trades and professions; and this constitutional amendment shall not be construed to amend or repeal existing laws or Acts amendatory thereof concerning such fees and moneys.

2. No bills, claims, accounts, or demands against the state or any county or other political subdivision shall be audited, allowed, or paid until a full itemized statement in writing shall be filed with the officer or officers whose duty it may be to audit the same, and then only upon warrant drawn upon the treasurer of such funds by the proper officer or officers.
- 3- This amendment shall become effective on July 1, 1939.

SECTION 4. REPEAL. Section 15 of article XII of the Constitution of the State of North Dakota is hereby repealed.

SECTION 5. EFFECTIVE DATE. If approved by the voters, this measure is effective on January 1, 1989.

Disapproved November 6, 1984

123,365 to 162,309

NOTE: This was measure No. 1 on the general election ballot.

CONSTITUTIONAL AMENDMENTS, PROPOSED

CHAPTER 709

HOUSE CONCURRENT RESOLUTION NO. 3024
(Conmy)

COAL MINERAL INTEREST EXCHANGE

A concurrent resolution for the amendment of section 6 of article IX of the Constitution of the State of North Dakota, relating to the exchange of state coal mineral interests with federal coal mineral interests.

STATEMENT OF INTENT

This amendment authorizes the board of university and school lands to exchange state coal mineral interests with coal mineral interests of the United States.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 6 of article IX of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 6 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read 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 board, 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, 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.

Filed March 26, 1985

NOTE: This will be measure No. 1 on the primary election ballot.

CHAPTER 710

HOUSE CONCURRENT RESOLUTION NO. 3003
(Legislative Council)
(Interim Judiciary "B" Committee)

EXECUTIVE BRANCH ARTICLE CHANGES

A concurrent resolution to create a new article V of the Constitution of the State of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to the powers and duties of the governor, and to gubernatorial succession; to repeal the present article V of the Constitution of the State of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to the powers and duties of the governor, and to gubernatorial succession; and to provide an effective date.

STATEMENT OF INTENT

This measure creates a new executive branch article for the constitution that retains all the current elected state officials. The amendment provides for the election, qualification, and compensation of executive officials, for the powers and duties of the governor, and for gubernatorial succession. The amendment also repeals the present article V of the Constitution of the State of North Dakota, and provides that these changes will take effect on July 1, 1987.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed creation of a new article V and the following proposed repeal of the present article V of the Constitution of the State of North Dakota are agreed to and shall be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The tax commissioner must be elected on a no-party ballot and must be nominated and elected in the manner now provided for the nomination and election of the superintendent of public instruction.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a department of labor, the powers and duties of the officer administering that department must be prescribed by law.

SECTION 2. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor and the lieutenant governor must be elected on a joint ballot. Each vote cast for a candidate for governor is deemed cast also for the candidate for lieutenant governor nominated jointly with the candidate for governor. The joint candidates having the highest number of votes shall be declared elected, but if two or more joint candidates have an equal and highest number of votes for governor and lieutenant governor, the legislative assembly at its next regular session shall in joint session choose one pair of such joint candidates for the offices. The returns of the election for governor and lieutenant governor must be made in the manner prescribed by law.

SECTION 3. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

To be eligible to hold an elective office established by this article, a person must be a qualified elector of this state and must have been a resident of this state for the two years preceding election to office. The attorney general must be licensed to practice law in this state.

SECTION 4. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The

elected state officials shall serve until their successors are duly qualified. Terms of office are four years, except that terms of the public service commissioners are six years, so arranged that one of them is elected every two years.

If two or more candidates for any executive office receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

SECTION 5. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The compensation of elected state officials must be as provided by law, but may not be diminished during the term for which they were elected.

SECTION 6. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The elected state officials and the chief executive officers of the principal departments shall hold office at the seat of government.

SECTION 7. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor is the chief executive of the state. The governor shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed.

The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and to maintain order.

The governor shall prescribe the duties of the lieutenant governor in addition to those prescribed in section 10 of this resolution or as provided by law.

The governor may call special sessions of the legislative assembly.

The governor may require information in writing from all executive officials and officers concerning the performance of their respective duties.

The governor may grant reprieves, commutations, and pardons as provided by law. The governor may delegate this power as provided by law.

The governor may supervise business with the United States and other states.

SECTION 8. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office which is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes the governor shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate may again be nominated for that office at the same session, nor may the nominee be appointed to that office during a recess or adjournment of the senate.

SECTION 9. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it shall become law.

The governor may veto a bill passed by the legislative assembly. The governor may disapprove of any item or items, or part or parts of any bill making appropriations of money or property embracing distinct items. Portions of the bill not vetoed shall become law.

The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, shall immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill shall become law.

While the legislative assembly is in session, a bill shall become law if the governor neither signs nor vetoes it within three days, Saturdays and Sundays excepted, after its delivery to the governor. If the legislative assembly is not in session, a bill shall become law if the governor neither signs nor vetoes it within fifteen days, Saturdays and Sundays excepted, after its delivery to the governor.

SECTION 10. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Any governor of this state who asks, receives, or agrees to receive any bribe upon any understanding that the governor's official opinion, judgment, or action shall be influenced thereby, or who gives or offers, or promises the governor's official influence in consideration that any member of the legislative assembly shall give the member's official vote or influence on any particular side of any question or matter upon which the member may be required to act in the member's official capacity, or who menaces any member by the threatened use of the governor's veto power, or who offers or promises any member that the governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give the member's official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly, or who threatens any member that the governor will remove any person or persons from office or position with intent in any manner to influence the action of that member, must be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof forfeits all right to hold or exercise any office of trust or honor in this state.

SECTION 11. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The lieutenant governor shall serve as president of the senate, and may, if the senate is equally divided on a question, vote on procedural and substantive matters. If, during a vacancy in the office of governor, the lieutenant governor is unable to serve because of death, impeachment, resignation, failure to qualify, removal from office, or disability, the secretary of state shall act as governor until the vacancy is filled or the disability removed.

SECTION 12. REPEAL. The present article V of the Constitution of the State of North Dakota is hereby repealed.

SECTION 13. EFFECTIVE DATE. The provisions of this resolution, if approved by the people, shall take effect on July 1, 1987.

Filed April 4, 1985

NOTE: This will be measure No. 2 on the primary election ballot.

CHAPTER 711

SENATE CONCURRENT RESOLUTION NO. 4005
(Legislative Council)
(Interim Government Reorganization Committee)

BOARD OF UNIVERSITY AND SCHOOL LANDS MEMBERSHIP

A concurrent resolution for the amendment of section 3 of article IX of the Constitution of the State of North Dakota, relating to membership of the board of university and school lands.

STATEMENT OF INTENT

This amendment replaces the state auditor with the state treasurer as a member of the board of university and school lands.

BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA,
THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 3 of article IX of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 3 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 3. The superintendent of public instruction, governor, attorney general, secretary of state and state ~~auditor shall constitute treasurer~~ comprise a board of commissioners, ~~which shall be~~ denominated the "board of university and school lands"; and, subject. Subject to the provisions of this article and any law that may be passed by the legislative assembly, ~~said the board shall have~~ has control of the appraisement, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law.

Filed April 5, 1985

NOTE: This will be measure No. 3 on the primary election ballot.

CHAPTER 712

SENATE CONCURRENT RESOLUTION NO. 4021
(Senators Holmberg, Redlin, Wenstrom)
(Representatives Strinden, Mertens, Stofferahn)

GOVERNOR'S TERM

A concurrent resolution for the amendment of section 1 of article V of the Constitution of the State of North Dakota, or in the alternative for the amendment of the new section to the new article V of the Constitution of the State of North Dakota as created by section 4 of House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, relating to the term of the governor and lieutenant governor.

STATEMENT OF INTENT

This amendment provides that the governor's and lieutenant governor's term of office would begin on December fifteenth following their election.

BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA,
THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 1 of article V of the Constitution of the State of North Dakota if House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, having been submitted to the voters, is not approved in the primary election held in 1986, or the following proposed amendment to the new section to the new article V of the Constitution of the State of North Dakota if House Concurrent Resolution No. 3003 is approved at the primary election, is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 1 of article V of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 1. The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of four years beginning in the year ~~1965~~ 1988, and

until ~~his~~ a successor is elected and duly qualified. The term begins on December fifteenth following the governor's election.

SECTION 2. AMENDMENT. The new section to the new article V of the Constitution of the State of North Dakota as created by section 4 of House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office are four years, except that terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and the lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

Filed March 28, 1985

NOTE: This will be measure No. 1 on the general election ballot.

CHAPTER 713

SENATE CONCURRENT RESOLUTION NO. 4022
(Holmberg)

TAX COMMISSIONER ON PARTY BALLOT

A concurrent resolution for the amendment of section 12 of article V of the Constitution of the State of North Dakota, relating to the requirement that the tax commissioner be elected on a no-party ballot, or in the alternative for the amendment of the new section to the new article V of the Constitution of the State of North Dakota as created by section 1 of House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, relating to the requirement that the tax commissioner be elected on a no-party ballot.

STATEMENT OF INTENT

This amendment would remove the requirement that the tax commissioner be elected on a no-party ballot.

BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA,
THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 12 of article V of the Constitution of the State of North Dakota if House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, having been submitted to the voters, is not approved in the primary election held in 1986, or the following proposed amendment to the new section to the new article V of the Constitution of the State of North Dakota if House Concurrent Resolution No. 3003 is approved at the primary election, is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 12 of article V of the Constitution of the State 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 tax commissioner shall be elected on a no-party ballot and he shall be nominated and elected in the manner now provided for the nomination and election of the superintendent of public instruction.

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 2. AMENDMENT. The new section to the new article V of the Constitution of the State of North Dakota as created by section 1 of House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly and the voters at the primary election, is hereby amended and reenacted to read as follows:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The tax commissioner must be elected on a no-party ballot and must be nominated and elected in the manner now provided for the nomination and election of the superintendent of public instruction.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a department of labor, the powers and duties of the officer administering that department must be prescribed by law.

Filed April 9, 1985

NOTE: This will be measure No. 2 on the general election ballot.

HOUSE RESOLUTION

CHAPTER 714

HOUSE RESOLUTION NO. 1
(Strinden, Mertens)
(Approved by the Committee on Delayed Bills)

APPRECIATION TO HOUSE JANITORS

A resolution expressing appreciation to the janitors who have been assigned to the House of Representatives during the Forty-ninth Legislative Assembly.

WHEREAS, the Director of Institutions assigns several employees to perform janitorial services for the Legislative Assembly each session; and

WHEREAS, during the Forty-ninth Legislative Assembly the Director of Institutions assigned Joe Emineth, Francis Scharosch, Eugene Reynolds, and Elmer C. Schweigert to the House of Representatives; and

WHEREAS, these janitors have rendered cooperation and assistance to the members of the House of Representatives; and

WHEREAS, the members of the House of Representatives wish to show their appreciation to these individuals;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That the House of Representatives expresses its appreciation and extends its thanks to Joe Emineth, Francis Scharosch, Eugene Reynolds, and Elmer C. Schweigert for their cooperation and assistance during the Forty-ninth Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to Joe Emineth, Francis Scharosch, Eugene Reynolds, Elmer C. Schweigert, and the Director of Institutions.

Filed April 5, 1985

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 715

HOUSE CONCURRENT RESOLUTION NO. 3001
(Legislative Council)
(Interim Administrative Rules Committee)

ADMINISTRATIVE AGENCY RULEMAKING AND APPEALS STUDY

A concurrent resolution directing the Legislative Council to study the statutes governing the rulemaking procedures and grants of rights of appeal from decisions of administrative agencies.

WHEREAS, the 1979-80 interim Administrative Rules Committee recommended a revision of the definition of administrative agency as used in the Administrative Agencies Practice Act (North Dakota Century Code Chapter 28-32); and

WHEREAS, the revised definition eliminated the requirement that statutes outside of Chapter 28-32 provide a separate right of appeal from decisions of administrative agencies; and

WHEREAS, that committee's intent and objective in revising the definition of administrative agency was correctly applied by the North Dakota Supreme Court in Hammond v. North Dakota State Personnel Board, 332 N.W.2d. 244 (N.D. 1983), by construing Section 28-32-15 as granting a right of appeal from final decisionmaking of administrative agencies, without the necessity that a right of appeal be provided by other statutes; and

WHEREAS, the analysis provided by the North Dakota Supreme Court may also apply to determine that an administrative agency has rulemaking authority under Section 28-32-02, without a separate statutory provision granting rulemaking authority; and

WHEREAS, several statutes throughout the North Dakota Century Code concerning administrative agencies and programs of administrative agencies may refer to rights of appeal and to rulemaking authority and procedures; and

WHEREAS, the presence of these provisions outside of Chapter 28-32 is confusing and may lead to questions as to the correct application of Chapter 28-32 with respect to the rulemaking and adjudicatory practices of state agencies, as well as the right of appeal from decisionmaking of administrative agencies;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the statutes governing rulemaking authority and procedures of state agencies, as well as the statutes granting rights of appeal from decisions of state agencies, with emphasis on standardizing rulemaking and appeals procedures by deleting such provisions in recognition of the provisions of the Administrative Agencies Practice Act; 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 Fiftieth Legislative Assembly.

Filed March 12, 1985

CHAPTER 716

HOUSE CONCURRENT RESOLUTION NO. 3002
(Legislative Council)
(Interim Agriculture Committee)

FHA LIMITED RESOURCE LOAN PROGRAMS

A concurrent resolution urging Congress to review the Farmers Home Administration's limited resource loan programs and provide for more Farmers Home Administration personnel.

WHEREAS, the Farmers Home Administration is required to designate at least a certain percentage of their allocated farm ownership and operating loan funds for limited resource farmers; and

WHEREAS, this percentage need only be met on a statewide basis; and

WHEREAS, certain inequities and problems have arisen with the administration of limited resource loans in several counties in North Dakota due to the minimum allocations being made on a statewide basis; and

WHEREAS, the funds allocated by the Farmers Home Administration to the limited resource loan programs are not uniformly distributed on a county-by-county basis; and

WHEREAS, there appears to be an inadequate number of trained Farmers Home Administration personnel at the county level to administer properly the loan programs of the Farmers Home Administration;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to review the Farmers Home Administration limited resource loan programs and provide for a more uniform and equitable distribution of benefits by requiring state offices of the Farmers Home Administration to allocate at least 20 percent of their farm ownership and operating loans to limited resource loan applicants upon a county-by-county basis; and

BE IT FURTHER RESOLVED, that the Congress of the United States appropriate additional funds to the Farmers Home Administration to be used at the county level to hire personnel to administer loan programs; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the national director of the Farmers Home Administration, the state director of the Farmers Home Administration in North Dakota, the chairmen of the Senate and House Committees on Agriculture, and each member of the North Dakota Congressional Delegation.

Filed February 18, 1985

CHAPTER 717

HOUSE CONCURRENT RESOLUTION NO. 3005 (Legislative Council) (Interim Natural Resources Committee)

FEDERAL PAYMENTS IN LIEU OF TAXES

A concurrent resolution urging the Congress of the United States to appropriate sufficient moneys to pay 100 percent of the payments in lieu of taxes under the Wildlife Refuge Revenue Sharing Act and the Payments in Lieu of Taxes Act of 1976.

WHEREAS, the federal government has acquired in this state land in fee for migratory bird sanctuaries, the national park system, the national forest system, water resource development projects, and other uses; and

WHEREAS, under the federal Migratory Bird Conservation Act the federal government through the Fish and Wildlife Service has acquired approximately 418,570 acres of fee lands in North Dakota for national wildlife refuges and waterfowl production areas and has acquired under other federal programs and agencies approximately 1.7 million additional acres of fee lands in this state; and

WHEREAS, the acquisition of these fee lands has resulted in the loss of tax revenues to counties in North Dakota because of the removal of these fee lands from the tax base; and

WHEREAS, under the federal Wildlife Refuge Revenue Sharing Act and the Payments in Lieu of Taxes Act of 1976, the federal government is to make payments in lieu of taxes to these affected counties to ameliorate the effects of the diminished tax base; and

WHEREAS, revenue received by the United States from these fee lands along with congressional appropriations have not been sufficient to pay 100 percent of the entitlements to these counties under the Wildlife Refuge Revenue Sharing Act and the Payments in Lieu of Taxes Act of 1976; and

WHEREAS, the counties affected by these fee acquisitions are entitled to receive the full benefit of the Wildlife Refuge Revenue Sharing Act and the Payments in Lieu of Taxes Act of 1976 to ameliorate the effects of the loss of the tax base resulting from federal fee land acquisitions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to appropriate moneys in the future sufficient to pay 100 percent of the payments in lieu of taxes under the Wildlife Refuge Revenue Sharing Act and the Payments in Lieu of Taxes Act of 1976; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, the chairman of the Senate Appropriations Committee, the chairman of the House of Representatives Appropriations Committee, the Secretary of the Interior, the President of the United States, and each member of the North Dakota Congressional Delegation.

Filed February 13, 1985

CHAPTER 718

HOUSE CONCURRENT RESOLUTION NO. 3006
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

PUBLIC EMPLOYEE RETIREMENT PROGRAMS COMMITTEE JURISDICTION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of expanding the jurisdiction of the Legislative Council's Committee on Public Employees Retirement Programs to include all fringe benefits for state employees.

WHEREAS, one of the purposes of employee fringe benefit programs is to allow the employer to provide a full and appropriate range of compensation to encourage the retention of qualified career employees; and

WHEREAS, fringe benefit programs offered by the state for its employees include a retirement program; deferred compensation program; health, medical, and life insurance coverage; and annual and sick leave benefits; and

WHEREAS, it is in the best interests of the state to provide fringe benefits for state employees in a manner which allows the state to use its resources in the most efficient manner and results in the best possible benefits for state employees; and

WHEREAS, to provide state employee fringe benefits in a manner which best benefits the state and its employees, it is necessary to coordinate fringe benefit programs; and

WHEREAS, the Legislative Council's Committee on Public Employees Retirement Programs has substantial review authority and experience with respect to proposed legislation affecting public employee retirement programs; and

WHEREAS, the Legislative Council's Committee on Public Employees Retirement Programs has, through the years, developed expertise in dealing with public employees on the issues regarding public employee retirement programs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the feasibility and desirability of increasing the jurisdiction of the Committee on Public Employees Retirement Programs to include all fringe benefit programs for state employees; 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 Fiftieth Legislative Assembly.

Filed March 12, 1985

CHAPTER 719

HOUSE CONCURRENT RESOLUTION NO. 3007
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

PUBLIC EMPLOYEE RETIREMENT FUNDS CONSOLIDATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating the various public employee retirement funds in the state.

WHEREAS, it is in the best interests of the state and its political subdivisions to provide adequate retirement programs for the benefit of their public employees; and

WHEREAS, the adequacy of public employee retirement programs is dependent on the existence of the proper administration and investment of public employee retirement funds; and

WHEREAS, state law authorizes many public employee retirement programs, including the Public Employees Retirement System, the Teachers' Fund for Retirement, TIAA-CREF, the Highway Patrolmen's Retirement System, the Alternate Firemen's Relief Association Retirement Plan, city police retirement plans, and city employee retirement plans; and

WHEREAS, it is possible these numerous retirement programs are not being administered in a consistent and effective manner; and

WHEREAS, there is a need to examine the rationale and desirability of having different levels of retirement benefits for the various classes of public employees in the state; and

WHEREAS, the consolidation of the various retirement programs in the state may result in more effective management and investment of public employee retirement funds for the overall benefit of public employees in the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of consolidating the public employee retirement programs in the state, including the Public Employees Retirement System, the Teachers' Fund for Retirement, the Highway Patrolmen's Retirement System, TIAA-CREF, the Alternate Firemen's Relief Association Retirement System, city police retirement plans, and city employee retirement plans, with consideration being given to the desirability of having differing benefit levels for different public employee classes;

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fiftieth Legislative Assembly.

Filed March 12, 1985

CHAPTER 720

HOUSE CONCURRENT RESOLUTION NO. 3008
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

PUBLIC EMPLOYEE RETIREMENT PROGRAMS ACTUARIAL STANDARDS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of imposing actuarial reporting and evaluation standards on all public employee retirement programs in the state.

WHEREAS, it is in the best interest of the state and its political subdivisions to ensure that retirement programs provided for the benefit of public employees remain in a sound actuarial and financial condition; and

WHEREAS, to ensure the continued actuarial soundness and financial stability of public employee retirement programs in the state, it is necessary for public employees to have access to sufficient information concerning their retirement programs to make sound judgments concerning those programs; and

WHEREAS, to ensure the continued soundness of these public employee retirement programs, it is also important that periodic, complete, and uniform evaluations be performed to allow current and consistent appraisal of the condition of those programs; and

WHEREAS, no state or federal law requires public employee retirement programs to provide such information to members of public employee retirement programs or requires periodic and standard actuarial and financial evaluations; and

WHEREAS, without this information it is impossible to know whether any particular retirement program is in sound condition;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council conduct a study of the feasibility and desirability of imposing uniform information reporting and evaluation standards on all public employee retirement programs in the state;

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fiftieth Legislative Assembly.

Filed March 12, 1985

CHAPTER 721

HOUSE CONCURRENT RESOLUTION NO. 3009
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

PUBLIC EMPLOYEE RETIREMENT PROGRAMS ACTUARIAL SOUNDNESS STUDY

A concurrent resolution directing the Legislative Council to study the actuarial soundness and financial status of public employee retirement programs authorized by state law for employees of political subdivisions.

WHEREAS, state law authorizes political subdivisions to establish retirement programs for their public employees, including retirement programs for city employees, city police, firemen, county employees, and noncertified employees of school districts; and

WHEREAS, political subdivision public employee retirement programs exist to assist political subdivision employees financially when they reach retirement age and also serve to aid political subdivisions in retaining qualified career employees; and

WHEREAS, it is essential that existing retirement programs for political subdivision employees remain in a sound actuarial and financial condition in order to meet the purposes of the programs; and

WHEREAS, retirement programs for employees of political subdivisions are not required to be reviewed for actuarial soundness by any state or local authority; and

WHEREAS, certain retirement programs for public employees of some political subdivisions in this state are experiencing actuarial funding problems; and

WHEREAS, there is a potential that other political subdivision public employee retirement programs may also be experiencing funding problems;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the actuarial soundness and financial stability of public employee retirement programs offered by political subdivisions authorized under state 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 Fiftieth Legislative Assembly.

CHAPTER 722

HOUSE CONCURRENT RESOLUTION NO. 3010
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

FIREMEN'S RELIEF ASSOCIATION RETIREMENT PROGRAMS SOUNDNESS STUDY

A concurrent resolution directing the Legislative Council to study the actuarial soundness of the Alternate Firemen's Relief Association retirement programs under North Dakota Century Code Chapter 18-11.

WHEREAS, the Fargo Alternate Firemen's Relief Association Retirement Plan is experiencing a serious funding deficiency; and

WHEREAS, the funding problems of the Fargo Alternate Firemen's Relief Association is, in part, due to the existence of certain cost-of-living adjustment provisions in North Dakota Century Code Chapter 18-11; and

WHEREAS, the Bismarck Alternate Firemen's Relief Association Retirement Plan is also authorized under North Dakota Century Code Chapter 18-11 and there exist some questions concerning the actuarial soundness of that firemen's retirement system; and

WHEREAS, there is a need to examine possible legislative solutions, if necessary, to ensure the actuarial soundness of these retirement funds;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council conduct a comprehensive study of the Alternate Firemen's Relief Association Retirement Plans in existence, as authorized under North Dakota Century Code Chapter 18-11, including an actuarial valuation of the systems, if necessary, for the purpose of determining whether any legislative changes or corrections are necessary to ensure the actuarial soundness of these retirement 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 Fiftieth Legislative Assembly.

Filed March 12, 1985

CHAPTER 723

HOUSE CONCURRENT RESOLUTION NO. 3011
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

**PUBLIC EMPLOYEE RETIREMENT HEALTH CARE
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a prefunded retirement health care plan for public employees through the state uniform group insurance plan.

WHEREAS, health care costs in this country have been increasing during recent years with a resulting rise in health care insurance costs; and

WHEREAS, these rising health care insurance costs have a negative impact on the financial resources of retired public employees in this state; and

WHEREAS, while public employees are allowed to remain as members of the state uniform group insurance plan after retirement, the premiums for even this group coverage often strains the financial resources of retired public employees; and

WHEREAS, an alternative method of assisting public employees to cover the financial costs of health and medical insurance premiums is to establish a state prefunded retirement health care program for public employees to which public employees could contribute during their working years;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council conduct a study of the feasibility and desirability of establishing a prefunded retirement health care program for public employees in the state within the state uniform group insurance plan; 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 Fiftieth Legislative Assembly.

Filed March 20, 1985

CHAPTER 724

HOUSE CONCURRENT RESOLUTION NO. 3012 (Representatives Strinden, Mertens) (Senators Nething, Heigaard)

POSITION ON GARRISON DIVERSION PROJECT

A concurrent resolution advising the Garrison Diversion Unit Commission of the Legislative Assembly's position on plans for the Garrison Diversion Project now being considered by the commission.

WHEREAS, the North Dakota Legislative Assembly, representing all the people and all the interests of the state, views a sound water resource development program of Missouri River water diversion as basic to the long-term aspirations of North Dakota to accommodate residential growth and improve economic well-being through agriculture and industry; and

WHEREAS, North Dakota has sacrificed the economic gross product of 840 square miles of its choice Missouri River bottomland at an annual loss of \$131 million in economic gross product so that the Pick-Sloan Program can provide flood control, river navigation, and low cost hydroelectric power of most benefit to downstream states; and

WHEREAS, North Dakota's effort to obtain the 1,007,000 acres of irrigation promised in the Flood Control Act of 1944 to offset this state's sacrifice has been challenged by interests fearing a reduction in the production of wild waterfowl, and those who seek to prevent upstream Missouri River water diversion; and

WHEREAS, the Congress of the United States has created the Garrison Diversion Unit Commission to compromise differences between those who fear a reduction in the production of wild waterfowl and those who seek implementation of a North Dakota water development and management program to serve the long-term interests of irrigation, municipal and industrial use, and recreation as well as wild waterfowl habitat enhancement; and

WHEREAS, the Garrison Diversion Unit Commission will meet in Minot, December 13, 1984, to draw up its final recommendations to Congress;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the 49th Session of the North Dakota Legislative Assembly meeting in special session in Bismarck, December 6, 1984, does by this resolution advise the Garrison Diversion Unit Commission as follows:

1. The Legislative Assembly recognizes that North Dakota's vast 32 million acre pothole region has great advantages in the production of wild waterfowl and the state has certain Central Flyway obligations, consequently the Legislative Assembly continually reviews, establishes, and adjusts laws and programs relating to the production and protection of wild waterfowl, and regards such wild waterfowl production in its rightful context as an integral and important part of this state's water resource development and management, but not an integral part that is dominant to the detriment of other beneficial water users.
2. The Legislative Assembly recognizes the need for North Dakota to consider the interests of adjacent Canadian provinces and the need to cooperate with them in our mutual and reciprocal interests, and that our Canadian relationship is under continuing legislative review and adjustment regarding such diverse activities as Canadian hydroelectric transmission and sales in and across the state, Canadian air and water pollution from border developments, sale of Canadian fresh and frozen fish outside of the Hudson Bay drainage in the state, and water resource development including irrigation in the United States-Canadian drainage in the state.
3. The Legislative Assembly recognizes that state lines do not determine the configuration of the projects in the 10-state Pick-Sloan Program, and that those upstream states making an annual sacrifice to provide Pick-Sloan Program benefits downstream include South Dakota, which has a legitimate claim to water development in that state through the continuation of the James River portion of the Garrison Diversion Project.
4. Any final decision that places a limit on North Dakota's potential for ultimate beneficial use and management of this state's share of Missouri River water caused by the elimination of the full design and construction of the Lonetree Reservoir and the Taayer Reservoir or an alternative regulating reservoir is unacceptable.
5. Any final decision that removes South Dakota's legitimate potential for ultimate use and management of a share of Missouri River water through elimination of the Lonetree

- Reservoir and the Taayer Reservoir or an alternative regulating reservoir is unacceptable.
6. Any final decision that would eliminate Lonetree Reservoir because of Canadian opposition would cause an unresolved difference between Manitoba and North Dakota to fester forever, which would adversely affect relations between us on a host of matters. This state's use of Missouri River water in the United States-Canadian drainage can and will be resolved to Canada's satisfaction in time.
 7. Any final decision that attempts to solve future large-scale municipal and industrial water demand, caused by growth and industrial development, by pipelines the size of which establishes maximum future growth, and the costs of installation, operation, maintenance, and eventual replacement of which would be excessive, is unacceptable as a substitute for the thoroughly engineered and designed project which includes the full design and construction of the Lonetree Reservoir.
 8. Any final decision that eliminates Lonetree Reservoir and a regulating reservoir on the lower James River as features of water development and management in North Dakota, in order to make the dominant mission of water development in this state that of wild waterfowl production, is unacceptable.
 9. The North Dakota Legislative Assembly does fully endorse and approve the efforts of the Governor and the Garrison Diversion Conservancy District to have accepted as the Garrison Diversion Unit Commission's final decision the "North Dakota Plan" for development of the Garrison Diversion Unit calling for the potential irrigation of 303,000 acres of irrigation and other multiple uses, and in addition, any associated development, protection, and management for stabilized and enhanced wild waterfowl production, insulated where possible from the wide swings in wild waterfowl production caused by the ever recurring wet-dry cycles.
 10. The Legislative Assembly believes that an equitable compromise consists of two opposing sides achieving their objectives. The National Audubon Society can achieve its objectives of protecting and enhancing the annual wild waterfowl production in North Dakota without crippling and making unworkable the Garrison Diversion Project. The state of North Dakota can achieve the Garrison Diversion Project objective without reducing wild waterfowl production. Any compromise which destroys the objectives of either of the opposing sides is not a compromise. Elimination of the Lonetree Reservoir and a regulating reservoir on the lower James River would make the Garrison Diversion Project so engineeringly unworkable,

environmentally and economically unsound and so limiting in potential for ultimate development as to be unacceptable; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to each member of the Garrison Diversion Unit Commission and to each member of the North Dakota Congressional Delegation.

Filed December 6, 1984

CHAPTER 725

HOUSE CONCURRENT RESOLUTION NO. 3013 (Representatives Riley, Moore) (Senator Peterson)

SID CICHY CONGRATULATED

A concurrent resolution congratulating former Fargo Shanley High School football coach Sid Cichy on being inducted into the National High School Sports Hall of Fame.

WHEREAS, Sid Cichy has been recognized nationally and in this state for his success as football coach at Shanley High School in Fargo; and

WHEREAS, Sid Cichy during his coaching career at Shanley High School accumulated a record of 231 wins, 38 losses, and three ties and also acquired 13 state football championships and two co-championships from 1950 through 1977; and

WHEREAS, Sid Cichy coached Shanley High School football teams that were named the State Associated Press Team of the Year five times; he has been named State Coach of the Year numerous times; and he was named National Football Coach of the Year in 1975 and Kellogg's Upper Midwest Coach of the Year in 1977; and

WHEREAS, Sid Cichy, because of his accomplishments as Shanley High School football coach, was officially inducted into the National High School Sports Hall of Fame at Milwaukee, Wisconsin, on Tuesday, December 11, 1984;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly of the State of North Dakota extends its sincere congratulations to Mr. Sid Cichy on being named to the National High School Sports Hall of Fame; and

BE IT FURTHER RESOLVED, that the Secretary of State forward ten copies of this resolution to Mr. Sid Cichy.

Filed February 20, 1985

CHAPTER 726

HOUSE CONCURRENT RESOLUTION NO. 3016
(Representatives O. Hanson, Nicholas)
(Senators Thane, Vosper, Tweten)

FARM INDUSTRY CRISIS

A concurrent resolution urging Congress to enact, and urging the United States Department of Agriculture, the Farm Credit Association, and the Farmers Home Administration to enforce, legislation to alleviate the crisis in the farm industry in this country.

WHEREAS, 23 million Americans, or 22 percent of the total United States work force, earn their livings in the farm food or fiber industry; and

WHEREAS, high interest rates, the unavailability of farm credit, low farm product prices, devalued land, and the strong United States dollar have resulted in a farm credit crisis for many farmers; and

WHEREAS, the total interest cost for North Dakota farmers rose 78 percent from 1979 through 1982, while farm income fell one percent during the same time period; and

WHEREAS, farmers cannot continue to sell their commodities for less than the cost of production; and

WHEREAS, this farm credit crisis has caused record numbers of farm foreclosures and farm auctions across the United States; and

WHEREAS, the number of farms in North Dakota and nationwide has declined drastically and is expected to continue to fall one percent per year during the coming decade; and

WHEREAS, the farm credit crisis is having an adverse effect upon all sectors of the United States economy and is adversely affecting every state in the union; and

WHEREAS, federal action is necessary due to the broad nature of this problem;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to enact legislation to alleviate the crisis in the farm industry in this country and urges the United States Department of Agriculture and all other federal agencies to enforce any legislation enacted to alleviate the crisis in the farm industry, and to prevent the extinction of the American farmer; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the United States Secretary of Agriculture, the Farm Credit Association, the Farmers Home Administration, the chairmen of the Senate and House Committees on Agriculture, and each member of the North Dakota Congressional Delegation.

Filed February 18, 1985

CHAPTER 727

HOUSE CONCURRENT RESOLUTION NO. 3019
(Representatives Unhjem, DeMers)
(Senators Heinrich, Lashkowitz)

**PERSECUTION OF BAHA'I FAITHFUL
CONDEMNED**

A concurrent resolution condemning the persecution of members of the Baha'i faith by the government of Iran.

WHEREAS, the civilized peoples of the world are increasingly alarmed and appalled at the persecution and severe repression of the Baha'is in Iran; and

WHEREAS, since the 1979 revolution in Iran, more than 170 prominent members of the Baha'i faith have been assassinated or executed, and more than 700 members are currently imprisoned; and

WHEREAS, since the 1979 revolution in Iran, all Baha'i holy places, properties, and cemeteries have been confiscated or destroyed; and

WHEREAS, hundreds of Baha'is have been dismissed from their jobs or deprived of their business and trade licenses and seizure of members' bank funds and destruction of members' personal property have been widespread; and

WHEREAS, no child of Baha'i parentage has been allowed to register for school at any level; and

WHEREAS, these genocidal practices by the Iranian government clearly violate its obligations under international human rights law, particularly the International Covenant on Civil and Political Rights; and

WHEREAS, the people of the State of North Dakota and all the United States of America are now, and always will be, adamantly opposed to persecution of all kinds, especially religious persecution; and

WHEREAS, all civilized peoples recognized the existence of international legal and moral principles demanding respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

WHEREAS, on December 11, 1946, in reaction to the genocide practiced in World War II, the General Assembly of the United Nations adopted a resolution denouncing genocide as a crime under international law;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly of the State of North Dakota expresses its shock and revulsion at the present program of the Iranian government to decimate the Baha'i faith and implores the Iranian leadership to acknowledge and abide by its obligations under international human rights law and to put an immediate end to its genocidal practices; and

BE IT FURTHER RESOLVED, that the Forty-ninth Legislative Assembly urges that the United States of America, through its membership in the United Nations, propose that the General Assembly of that organization adopt a resolution denouncing the genocidal actions of the Iranian government, and call on the Security Council of that organization to investigate the persecution of members of the Baha'i faith by Iran and take all necessary actions to assure that this violation of international law is stopped; 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 United States Secretary of State, the United States' representative to the United Nations, the Secretary-General of the United Nations, each member of the North Dakota Congressional Delegation, and the Spiritual Assembly of the Baha'is of Jamestown, North Dakota.

Filed March 26, 1985

CHAPTER 728

HOUSE CONCURRENT RESOLUTION NO. 3020 (Kretschmar)

CRIMINAL JUDGMENT CENTRAL FILING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a central filing office for criminal judgments.

WHEREAS, criminal records maintained by the Bureau of Criminal Investigation, Game and Fish Department, and Motor Vehicle Operators License Division of the Highway Department are not comprehensive in that each agency's records concern only violations of laws within the jurisdiction of that agency; and

WHEREAS, misdemeanants who receive a deferred imposition of sentence or a suspended sentence conditioned upon court-ordered terms are not usually placed under the supervision of parole officers; and

WHEREAS, the cost of using parole agents for defendants who have received conditional deferred or suspended sentences for misdemeanor offenses would be unduly prohibitive in both time and money; and

WHEREAS, the criminal records maintained by state agencies are inadequate to allow determination of whether the terms of an individual's suspended or deferred sentence have been violated; and

WHEREAS, no system or procedure exists to notify the appropriate judge or state's attorney of violation of the terms and conditions of the deferred or suspended sentence of a misdemeanant; and

WHEREAS, lack of a comprehensive state recordkeeping system or notification procedure results in many convicted defendants being treated time and again as first offenders; and

WHEREAS, filing of statistical information and criminal judgments concerning misdemeanants with a central filing office and automatic notification of the appropriate judge or state's attorney of a violation by a misdemeanant of the terms under which all or a portion of the sentence was deferred or suspended would improve the administration of justice;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the feasibility and desirability of establishing a central filing office for criminal judgments; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 729

HOUSE CONCURRENT RESOLUTION NO. 3022 (Kretschmar)

LEGISLATIVE STATUTES REVISION STUDY

A concurrent resolution directing the Legislative Council to study the need for revision of statutes and the Senate and House rules in light of the 1984 amendments to Article IV of the Constitution of North Dakota.

WHEREAS, the voters of the state, at the 1984 primary and general elections, approved two measures which made significant changes in Article IV of the Constitution of North Dakota, relating to the Legislative Assembly; and

WHEREAS, the measures approved in 1984 are to become effective on December 1, 1986; and

WHEREAS, thorough study is required to assure that Senate and House rules and statutory provisions are in harmony with the recently approved provisions of Article IV of the Constitution of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the Senate and House rules and the statutes for the purpose of assuring harmony with the provisions of Article IV of the Constitution of North Dakota as it will be in effect on December 1, 1986; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 730

HOUSE CONCURRENT RESOLUTION NO. 3023
(Representatives Riehl, Thompson)
(Senators Parker, Maixner, Krauter)

RETURN OF AMERICAN PRISONERS OF WAR IN ASIA

A concurrent resolution urging the President of the United States and the Congress of the United States to take all steps necessary to secure the return of all Americans still held as prisoners of war in Southeast Asia.

WHEREAS, there have been numerous confirmed sightings of Americans still being held hostage by communists as a result of the Korean and Vietnam conflicts; and

WHEREAS, more than 2,800 American troops are still unaccounted for from the Korean and Vietnam conflicts; and

WHEREAS, since 1973 there have been more than 4,000 individual sighting reports made with respect to Americans still being held prisoner in Southeast Asia; and

WHEREAS, it can be assumed that the conditions of existence for these prisoners is deplorable at best; and

WHEREAS, these Americans entered hostile foreign territory because the American people, through their elected representatives, sent them there; and

WHEREAS, only the full force and power of the expressed will of the American people, exercised through their elected representatives, can bring about the release of these Americans;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the President of the United States and the Congress of the United States to take all necessary action to obtain the release and return of Americans being held as prisoners of war in Southeast Asia; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States and each member of the North Dakota Congressional Delegation.

Filed March 20, 1985

CHAPTER 731

HOUSE CONCURRENT RESOLUTION NO. 3025
(Representatives Nalewaja, Moore)
(Senator Adams)

SALES AND USE TAX EXEMPTIONS STUDY

A concurrent resolution directing the Legislative Council to study the exemptions allowed by law from state sales and use taxes to determine their impact on state revenues, their effect on public and fiscal policy and their administrative burden upon retailers who must document exempt sales.

WHEREAS, sales and use tax revenues are the largest single revenue source of state government and the laws of North Dakota provide for exemption from sales and use taxes for certain persons, properties, and organizations; and

WHEREAS, several of the exemptions granted from sales and use taxes have been in effect for many years, and with the passage of time and change of circumstances certain of these exemptions may not presently be justified, and the revenue loss to the state from exemptions from sales and use taxes is substantial; and

WHEREAS, retailers in the state and state tax administration officials are under a burden of identifying allowable exemptions and processing documentation required to support the exemptions; and

WHEREAS, rising costs of state government in response to demands for increased services require substantial sales and use tax revenues which are currently being eroded by exemptions presently contained in the sales and use tax law; and

WHEREAS, a discontinuance of unwarranted exemptions from sales and use taxes could have the effect of increasing revenue for state purposes without increasing the rate of sales and use taxes now levied on persons, properties, and organizations subject to these taxes, and may reduce the administrative burden on North Dakota retailers and tax administration officials;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the exemptions from sales and use taxes provided by the laws of this state and determine whether, because of equity, passage of time, administrative difficulties, or the need for increased revenue, certain exemptions should be considered for elimination or modification; 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 Fiftieth Legislative Assembly.

Filed March 12, 1985

CHAPTER 732

HOUSE CONCURRENT RESOLUTION NO. 3026
(Representatives Hamerlik, Unhjem, DeMers)
(Senator Holmberg)

EDUCATION OF GIFTED CHILDREN STUDY

A concurrent resolution directing the Legislative Council to study the special education needs of gifted children and special education programs available to gifted children and to determine what improvements to those programs can and should be made.

WHEREAS, special education issues affect students other than handicapped and disadvantaged students; and

WHEREAS, state law defines special education to include services for gifted children who by virtue of their outstanding abilities require differentiated educational programs and services beyond those normally provided by the regular school program; and

WHEREAS, there may exist a need to expand public school programs for gifted children in order for those children to realize their full potential; and

WHEREAS, gifted children may well be among the future leaders of our society in the sciences, arts, humanities, government, and other important fields; and

WHEREAS, the educational needs of gifted children should be fully explored;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the special education needs of gifted children and the special education programs available to gifted children to determine what improvements to those programs can and should be made; 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 Fiftieth Legislative Assembly.

Filed March 20, 1985

CHAPTER 733

HOUSE CONCURRENT RESOLUTION NO. 3028
(Representatives D. Olsen, Haugland, Strinden)
(Senators Mushik, Tallackson, Nething)

HUMAN SERVICES DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study the consolidation of services provided by the Department of Human Services and the relationship between the Department of Human Services, the county social service boards, and mental health services; to review the services being provided by regional human service centers and to determine how responsive those centers are to referrals from the court system and other community agencies; and to examine alternatives for more efficient delivery of human services in North Dakota.

WHEREAS, Chapter 486 of the 1981 Session Laws placed the functions, powers, and duties of the Social Service Board of North Dakota, Governor's Council on Human Resources, Mental Health and Retardation Division of the Department of Health, Division of Alcoholism and Drug Abuse of the Department of Health, and State Council on Developmental Disabilities under the authority of a newly created Department of Human Services; and

WHEREAS, this combination of agencies was done to make more efficient the delivery of all "human services", to minimize the administration costs of providing those services, and to eliminate the duplication of services; and

WHEREAS, delivery of services through the Department of Human Services should be monitored by the Legislative Assembly to assure that intended services are being efficiently provided;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the consolidated services being provided by the Department of Human Services and the relationship between the Department of Human Services, the county social service boards, and mental health services; to review the services being provided by regional human service centers and to determine how responsive those centers are to the court system and to referrals from other community agencies; and to examine alternatives for more efficient delivery of human services in 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 Fiftieth Legislative Assembly.

CHAPTER 734

HOUSE CONCURRENT RESOLUTION NO. 3029
(Representatives Watne, Brokaw, Shockman)
(Senator Maixner)

DISCHARGE OF TAX ON FARMLAND SOLD IN BANKRUPTCY

A concurrent resolution urging the Congress of the United States to enact legislation to allow the discharge in bankruptcy proceedings of federal tax debts resulting from the sale of farmland to pay creditors.

WHEREAS, due to the severe economic crisis in the agriculture industry it is becoming increasingly common for American farmers to seek protection under federal bankruptcy proceedings; and

WHEREAS, the federal bankruptcy law should allow individuals protection and a chance to begin anew after making all nonexempt property available to their creditors; and

WHEREAS, the sale of farmland in bankruptcy proceedings presently results in a nondischargeable income tax liability for capital gains on the property due to the low basis of most farmland; and

WHEREAS, farmers, having been forced to go through a bankruptcy proceeding and lose their farm, are faced with payment of capital gains tax for the sale of the property, from which they received no benefit, because any benefit from the sale inures to the benefit of their creditors;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to enact legislation to remove the priority for and make dischargeable the income tax debt for capital gains on farmland sold in bankruptcy proceedings to pay creditors of the bankrupt; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed March 12, 1985

CHAPTER 735

HOUSE CONCURRENT RESOLUTION NO. 3030
(Representative Vander Vorst)
(Senators Kusler, D. Meyer)

GRASSHOPPER CONTROL ON FEDERAL LANDS

A concurrent resolution urging Congress and federal agencies to protect adequately against grasshopper infestations on federal land.

WHEREAS, the federal government owns or holds in trust large tracts of uncultivated land in the western states, including North Dakota; and

WHEREAS, the federal government should act as a responsible neighbor to private landowners; and

WHEREAS, private landowners engage in programs to prevent and combat grasshopper infestations on their lands; and

WHEREAS, federal agencies holding land, including the Corps of Engineers, have provided inadequate protection against grasshopper infestations and have failed to adequately combat occurrences of infestation; and

WHEREAS, spraying and other activities are necessary to keep grasshopper infestations on semiarid lands from spreading to adjoining privately owned tracts of land; and

WHEREAS, failure to control grasshoppers on federal land causes severe harm to North Dakota grain and livestock industries;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress to appropriate additional funds for, and urges federal agencies to work toward, preventing and combating grasshopper infestations on federal lands, and urges the Congress to speed up the approval of funds by reviewing these regulations which nearly inhibit the spraying of federal lands; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of Agriculture, the Corps of Engineers, the Secretary of the Interior, the chairmen of the Senate and House Committees on Agriculture, and each member of the North Dakota Congressional Delegation.

CHAPTER 736

HOUSE CONCURRENT RESOLUTION NO. 3033
(Starke)

LT. COL. JAMES BUCHLI CONGRATULATED

A concurrent resolution congratulating Lieutenant Colonel James Buchli and members of the Discovery flight crew on their selection to serve on the Space Shuttle Mission 51-C.

WHEREAS, it is a custom of the Legislative Assembly to recognize and honor North Dakota citizens for their national accomplishments; and

WHEREAS, Lieutenant Colonel James Buchli, a native of New Rockford, North Dakota, who moved to, and graduated from high school in Fargo, North Dakota, has been selected to serve as a mission specialist aboard the Discovery on Space Shuttle Mission 51-C; and

WHEREAS, Lieutenant Colonel James Buchli will be the first North Dakotan to have traveled into outer space;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly takes great pleasure in extending to Lieutenant Colonel James Buchli and the other crew members of the Discovery its heartiest congratulations for being selected to serve on Space Shuttle Mission 51-C; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to Lieutenant Colonel James Buchli.

Filed January 30, 1985

CHAPTER 737

HOUSE CONCURRENT RESOLUTION NO. 3034
(Kloubec)FINANCIAL INSTITUTIONS ADMINISTRATION
STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating the statutory authority and administration of financial institutions organized under state laws in light of federal changes regarding regulation of financial institutions.

WHEREAS, banks, savings and loan associations, and credit unions are subject to separate statutory authority and administration by this state; and

WHEREAS, changes in federal law and regulations governing financial institutions eliminate many of the differences between the classifications of financial entities in the state; and

WHEREAS, it may now be possible to consolidate statutory authority and administration of state regulation of financial entities to achieve uniform statutory authority for and administration of the regulations governing the various types of financial entities organized under state law;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the feasibility and desirability of consolidating state statutory and regulatory authority of banks, savings and loan associations, and credit unions in light of changes in federal regulation of these financial entities; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 738

HOUSE CONCURRENT RESOLUTION NO. 3035
(Goetz, L. Hanson)

HUNTING AND FISHING LICENSE STUDY

A concurrent resolution directing the Legislative Council to study the issuance of licenses and permits to hunt and fish in North Dakota.

WHEREAS, North Dakota Century Code Chapter 20.1-03, relating to the issuance of licenses and permits to hunt and fish in North Dakota, causes undue confusion among residents and nonresidents of the state; and

WHEREAS, approximately 80 percent of all hunting and fishing licenses and permits are sold by agents appointed by county auditors pursuant to North Dakota Century Code Section 20.1-03-17; and

WHEREAS, the agents are concerned with the administrative time necessary to effect the issuance of hunting and fishing licenses and permits; and

WHEREAS, there is general agreement among these appointed agents and the State Game and Fish Department that a more workable and understandable system could be studied, drafted, perfected and implemented;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the issuance of hunting and fishing licenses and permits to residents and nonresidents for the purpose of determining the existence of methods and systems to make the issuance of hunting and fishing licenses and permits more workable and understandable; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 739

HOUSE CONCURRENT RESOLUTION NO. 3036 (R. Solberg)

STATUTORY LIEN STUDY

A concurrent resolution directing the Legislative Council to study the impacts and problems associated with numerous specific kinds and types of statutory liens and various types of property that are exempt from attachment or mesne process and levy or sale upon execution and other final process issued from any court and the various priorities and rights they create.

WHEREAS, past legislative sessions have seen fit to enact, over the last 90 years, numerous different kinds and types of statutory liens, many very specific in nature, different kinds of property exempt from process, levy, or sale; and

WHEREAS, these liens have created various priorities in the lienholder to the debtor's property and created various exemptions from process, levy, or sale;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the economic impact of statutory liens and the priorities they create and the kinds of exemptions and rights they create, with an emphasis on determining whether a more understandable, consistent, and uniform system of providing lien security and exemption from process, levy, or sale can be enacted in order to more properly inform all potentially affected parties of their rights and how to protect them and thereby avoid confusion and the cost of lengthy litigation; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 740

HOUSE CONCURRENT RESOLUTION NO. 3037
(Kretschmar, Conmy)

APPELLATE COURT STUDY

A concurrent resolution directing the Legislative Council to study the need for additional appellate court services.

WHEREAS, projected increases in case filings in the North Dakota Supreme Court may eventually create an intolerable delay in the disposition of appeals or have an adverse effect on the quality and workmanship of opinions or both; and

WHEREAS, appellate case processing should continue to remain current, with adequate time to hear and resolve each important case in the interest of justice; and

WHEREAS, many other states provide for intermediate appellate review; and

WHEREAS, an intermediate court of appeals may be necessary to relieve the caseload of the North Dakota Supreme Court;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the present and projected caseload of the North Dakota Supreme Court and the need for an intermediate court of appeals or other methods of alleviating the workload of the Supreme Court; and

BE IT FURTHER RESOLVED, that in conducting the study the Legislative Council may consult with the Chief Justice and justices of the North Dakota Supreme Court, the judges of the trial courts, the State Court Administrator, and the State Bar Association 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 Fiftieth Legislative Assembly.

Filed March 28, 1985

CHAPTER 741

HOUSE CONCURRENT RESOLUTION NO. 3039
(Representative Cleveland)
(Senator Stenehjem)

STUDENT FINANCIAL AID STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the availability and adequacy of financial aid available for students attending state postsecondary educational institutions and to determine the feasibility of initiating new state programs to provide financial aid to those students.

WHEREAS, the Constitution of North Dakota requires the Legislative Assembly to provide a system of free public education including schools of higher education; and

WHEREAS, in order to maximize access to that system of higher education there exists a need to provide students with a broad-based state financial aid program that will complement federal financial aid programs; and

WHEREAS, while the cost of attending postsecondary educational institutions continues to increase, the availability of student financial assistance from both the state and federal governments appears to be seriously threatened; and

WHEREAS, various types of legislation providing for student financial aid programs have been considered by the Legislative Assembly in the past without the benefit of an in-depth study of the matter;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the availability and adequacy of financial aid for students attending state postsecondary educational institutions and to determine the feasibility of initiating new state programs to provide financial aid to those 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 Fiftieth Legislative Assembly.

Filed March 20, 1985

CHAPTER 742

HOUSE CONCURRENT RESOLUTION NO. 3040
(Representatives Strinden, Mertens)
(Senators Nelson, Heigaard)

APPRECIATION OF AIR FORCE BASES AND MILITARY PERSONNEL

A concurrent resolution welcoming representatives of Grand Forks Air Force Base and Minot Air Force Base participating in the military-state government leadership exchange program.

WHEREAS, North Dakota is privileged to be host to the Grand Forks Air Force Base and Minot Air Force Base, as well as a number of other military installations; and

WHEREAS, the state of North Dakota appreciates the contributions provided to this state by the many military personnel stationed at these installations; and

WHEREAS, the Legislative Assembly is privileged to be host to several senior military leaders who are participating in a military-state government leadership exchange program; and

WHEREAS, the Legislative Assembly expresses its appreciation on behalf of the people of this state to all of the military personnel stationed in this state and welcomes the senior military leaders who are participating in the military-state government leadership exchange program;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly extends its appreciation to the military personnel stationed at Grand Forks Air Force Base, Minot Air Force Base, and other military installations in this state, and welcomes those personnel who are participating in the military-state government leadership exchange program; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Commander of the Grand Forks Air Force Base and the Commander of the Minot Air Force Base.

Filed January 31, 1985

CHAPTER 743

HOUSE CONCURRENT RESOLUTION NO. 3043
(Representatives Linderman, Starke, Stofferahn)
(Senators Wogsland, Kelsh)

FARM CRISIS ACTION

A concurrent resolution urging the Congress and the President to reduce interest rates, promote exports, and improve farm income.

WHEREAS, farmers are not currently receiving their cost of production; and

WHEREAS, the length and severity of the farmers' inability to meet the cost of production is causing a crisis situation in agriculture; and

WHEREAS, this crisis is affecting not only farmers, but also financial institutions, rural businesses, and the entire United States economy; and

WHEREAS, the high value of the United States dollar abroad has essentially created an embargo on exports of United States farm products; and

WHEREAS, interest rates are unjustifiably high, creating higher expenditures for farmers, while reducing commodity prices; and

WHEREAS, the farm crisis has already resulted in the bankruptcy of many farmers, financial institutions, rural businesses, and working individuals, which may cause the future collapse of the United States economy; and

WHEREAS, the disruption of farm careers and the dislocation of farm families will cause severe economic and social repercussions; and

WHEREAS, strong federal action is needed to remedy this farm crisis;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress and the President to take immediate action to reduce interest rates, reduce the value of the United States dollar, promote exports of farm commodities, and improve farm income through programs including production controls, support loan prices, and target prices, which will provide farmers with income sufficient to meet the cost of production and provide a decent standard of living; 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 director of the Office of Management and Budget, the Secretary of Agriculture, the Secretary of the Treasury, the chairmen of the Senate and House Committees on Agriculture, and the members of the North Dakota Congressional Delegation.

Filed March 12, 1985

CHAPTER 744

HOUSE CONCURRENT RESOLUTION NO. 3044
(Representatives Linderman, Starke, Stofferahn)
(Senators Wogsland, Kelsh)

SURPLUS COMMODITIES FOR STARVING PEOPLE

A concurrent resolution urging the federal government to supply surplus commodities to the starving people of the world.

WHEREAS, mass starvation exists in many countries of the world; and

WHEREAS, agricultural production in the United States greatly exceeds national consumption, causing full storage bins and depressed prices; and

WHEREAS, no other country in the world can match the United States in capacity to provide food aid and agricultural expertise; and

WHEREAS, the capacity to produce food creates a moral obligation on the part of the United States to feed starving people; and

WHEREAS, gaining the goodwill of people in other countries would be in the best interest of this country, to promote world peace and to reduce the need for military expenditures; and

WHEREAS, past recipients of food and agricultural aid have become good customers for our exports; and

WHEREAS, reducing surplus agricultural commodities would result in higher farm commodity prices;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the federal government to institute a program to provide a significant portion of our surplus commodities to feed the starving people throughout the world and to provide expertise to build the agricultural productivity of these countries; 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 director of the Office of Management and Budget, the Secretary of Agriculture, the chairmen of the Senate and House Committees on Agriculture, and each member of the North Dakota Congressional Delegation:

CHAPTER 745

HOUSE CONCURRENT RESOLUTION NO. 3045
(Representatives Wald, Timm)
(Senators Tallackson, Freborg)

CREDITOR PROTECTION IN BANKRUPTCY

A concurrent resolution urging Congress to review and revise the bankruptcy laws to provide creditors with more protection from losses resulting from debtors filing for bankruptcy.

WHEREAS, the state and the nation have undergone several years of economic difficulty resulting in financial losses and failure for many businesses and individuals; and

WHEREAS, an increasing number of individuals and businesses are resorting to federal bankruptcy relief to discharge debt and resolve financial difficulties; and

WHEREAS, the ready discharge of debt promotes an attitude of irresponsibility within society and severely impairs businesses that have supplied goods or services upon credit and in good faith; and

WHEREAS, the discharge of debt through bankruptcy reduces working capital and impairs cash flow for businesses and individuals, thus compounding financial difficulties, business failures, and job losses; and

WHEREAS, the Bankruptcy Reform Act [Pub. L. 95-598], as amended, and the Federal Judgeship Act of 1984 [Pub. L. 98-353] fail to adequately meet the need for reform in federal bankruptcy law;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to review and revise federal bankruptcy law to make voluntary bankruptcy a less attractive alternative of debt relief, to expedite the bankruptcy process, and to provide more protection to creditors from bankruptcy losses; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States and to each member of the North Dakota Congressional Delegation.

Filed March 29, 1985

CHAPTER 746

HOUSE CONCURRENT RESOLUTION NO. 3046
(Shockman, Brokaw, Eckroth, Watne, R. Solberg)

HEALTH CARE SERVICE DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study the system of health care service delivery, the reasons for the rapidly increasing costs of health care and health care insurance, and alternatives to contain those costs.

WHEREAS, the cost of health care has become a matter of major concern both nationally and in this state; and

WHEREAS, the average per capita expenditures for health care services in this state is above the national average and also higher than in any of the surrounding upper plains states; and

WHEREAS, the cost of health insurance premiums has increased at an average annual rate of between 14 percent and 17 percent; and

WHEREAS, the rate of increase in hospital expenses in this state has been higher than the average rate of increase for the nation and the upper plains region; and

WHEREAS, this state consistently has one of the highest per capita rates of hospital admissions in the nation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the delivery system for health care services, the reasons for the rapidly increasing costs of health care and health care insurance, and alternatives to contain the increase of those costs; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 747

HOUSE CONCURRENT RESOLUTION NO. 3048
(Richard, O'Connell, O. Solberg)

REDUCED FEDERAL LAND BANK INTEREST RATES

A concurrent resolution urging Congress and the Federal Farm Credit System to distribute mineral interest income through reduced interest rates for the Federal Land Bank members in the state where the minerals are located.

WHEREAS, the Federal Land Banks and Federal Land Bank Associations are part of the Federal Farm Credit System, as enacted by Congress; and

WHEREAS, the Federal Land Bank Associations retain 50 percent of the available minerals in real property foreclosure actions; and

WHEREAS, profits from these mineral interests are transferred to the district Federal Land Bank; and

WHEREAS, the profit from these mineral interests are used to determine income on a districtwide basis; and

WHEREAS, this income is used to determine the interest rates of the district; and

WHEREAS, these mineral interest profits should be used to determine interest rates on a statewide basis;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to enact legislation, and the Federal Farm Credit System to enforce the legislation, which would provide for Federal Land Bank income from mineral interests located in a state to be used to determine interest payments on a statewide, rather than districtwide, basis; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Federal Farm Credit System, the chairmen of the House and Senate Committees on Agriculture, and the members of the North Dakota Congressional Delegation.

Filed March 12, 1985

CHAPTER 748

HOUSE CONCURRENT RESOLUTION NO. 3049
(Laughlin, Kent, O'Connell, Larson, Lindgren)

"BUY NORTH DAKOTA PRODUCTS"

A concurrent resolution requesting the development and promotion of a North Dakota Product Label by the Department of Agriculture, and requesting use of the slogan "Buy North Dakota Products" on all literature and items printed with state funds.

WHEREAS, North Dakota is a major producer of many grains and other agricultural products; and

WHEREAS, the consumer may not be aware of the number of products raised, processed, and packaged in North Dakota; and

WHEREAS, there is a need for domestic efforts to make consumers more aware of nutritional values of the products raised in North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the North Dakota Department of Agriculture, in cooperation with the various commodity groups, retail associations, and food producers in North Dakota, develop a North Dakota product label and plan promotion efforts to showcase North Dakota-made products;

BE IT FURTHER RESOLVED, that the slogan "Buy North Dakota Products" be displayed on all literature and items printed with state funds.

Filed March 20, 1985

CHAPTER 749

HOUSE CONCURRENT RESOLUTION NO. 3050
(O'Connell, Myrdal, Watne, Smette)

MAPPING LANDFILLS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of mapping known landfills within the state.

WHEREAS, there are many landfills within the state, both public and private; and

WHEREAS, farm or industrial chemicals are widely used within the state; and

WHEREAS, these chemicals, along with their containers, are being disposed of at landfills on farming operations and public landfills; and

WHEREAS, these chemicals may cause contamination of the surrounding soil and groundwater; and

WHEREAS, information regarding the locations of these landfills may be important in the future locating of residences and water wells;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility of establishing statewide mapping of all known private or public landfills; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 750

HOUSE CONCURRENT RESOLUTION NO. 3051
(Schneider)

LEGAL SERVICES CORPORATION STUDY

A concurrent resolution directing the Legislative Council to study the desirability and feasibility of establishing a state-sponsored legal services corporation to provide legal services to persons with low incomes.

WHEREAS, in order for legal services to be provided to persons with low incomes, Congress has, since 1976, appropriated funds to the national nonprofit Legal Services Corporation; and

WHEREAS, federal funding to the Legal Services Corporation has been reduced in recent years and the prospects for future increases in funding are at best bleak; and

WHEREAS, the state of North Dakota has not previously appropriated funds to provide legal services to low income persons and the Legal Services Corporation offices in this state are not able to meet the need for legal services of all low income people; and

WHEREAS, many attorneys engaged in the private practice of law cannot or will not provide many of the legal services provided to low income people through the Legal Services Corporation; and

WHEREAS, all persons, regardless of their financial status, should have access to basic legal services;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the desirability and feasibility of establishing a state-sponsored legal services corporation to provide legal services to low income people; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985 .

CHAPTER 751

HOUSE CONCURRENT RESOLUTION NO. 3052
(Representative Unhjem)
(Senator Mushik)COMMISSION ON CHILDREN AND ADOLESCENTS
AT RISK

A concurrent resolution commending the Governor for the creation of a commission to study, coordinate, and promote the functions, services, facilities, and resources of the juvenile justice and human service delivery systems to determine appropriate means of treatment and placement services to meet the needs of children and adolescents at risk and to request the Governor to report the commission's findings and recommendations which may require legislative action to an interim committee of the Legislative Council for review and recommendations.

WHEREAS, the Governor has recognized the need for a more systematic and coordinated approach to the delivery of services addressing the needs of children and adolescents at risk, including victims of abuse, neglect, and incest; chronically delinquent children; emotionally and behaviorally disturbed adolescents; chemically dependent or abusing adolescents; runaway and homeless youth; and mentally ill adolescents; and

WHEREAS, the Governor has appointed a Commission on Children and Adolescents at Risk to address problems resulting from the insufficient numbers of community-based services and placement alternatives; the inappropriate or unavoidable detention of juveniles; the need for specialized residential treatment care facilities for serving emotionally disturbed adolescents; the need for a comprehensive plan for a continuum of residential and treatment services for high risk children and adolescents; the lack of uniform client information and data collection systems able to track children and adolescents within the system; and the need to develop timely, uniform, consistent, and formalized approaches to referring, evaluating, and treating children and adolescents through a coordination of public and private resources; and

WHEREAS, the Governor has directed that the commission report its findings to him, which findings may include matters requiring legislative action; and

WHEREAS, the Legislative Assembly is also concerned about improvement of the juvenile justice and human service delivery systems;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Governor is requested to direct the Commission on Children and Adolescents at Risk to report its findings and recommendations by June 15, 1986, including suggestions as to possible legislation required to carry out such recommendations, to an interim committee to be designated by the Legislative Council; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 752

HOUSE CONCURRENT RESOLUTION NO. 3053

(Representatives Strinden, Mertens)

(Senators Nething, Heigaard)

REA ANNIVERSARY

A concurrent resolution commending the Rural Electrification Administration on its 50th anniversary.

WHEREAS, the Legislative Assembly recognizes and honors groups and institutions for their national accomplishments; and

WHEREAS, May 11, 1985, is the golden anniversary of the organization of the Rural Electrification Administration (REA), as an administration under the United States Department of Agriculture; and

WHEREAS, the REA program remains an outstanding example of governmental action in concert with private individuals working to the ultimate benefit of this nation; and

WHEREAS, rural America and rural North Dakota enjoy dependable, reliable, and affordable central station electric service which greatly contributes to agricultural productivity and the quality of rural life; and

WHEREAS, this state is especially proud of the accomplishments of rural electric cooperatives as responsible business entities, which are owned, operated, and controlled by owner-members; and

WHEREAS, these feats and accomplishments have caused a continued dependable service to be performed for the benefit of this state and the nation by democratically controlled business entities; and

WHEREAS, these feats merit recognition by the state of North Dakota and its citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly takes great pride and pleasure in extending its heartiest commendation to the Rural Electrification Administration on its 50th anniversary, and hereby recognizes and gratefully acknowledges the benefits which rural electrification has brought to the citizens of this state and to the nation; and

BE IT FURTHER RESOLVED, that the Secretary of State send enrolled copies of this resolution to the Honorable John Block, Secretary of Agriculture, to Mr. Harold Hunter, Administrator, Rural Electrification Administration, to the National Association of Rural Electric Cooperatives, and to the North Dakota Association of Rural Electric Cooperatives.

Filed March 20, 1985

CHAPTER 753

HOUSE CONCURRENT RESOLUTION NO. 3054
(Representatives Nowatzki, Vander Vorst)
(Senator Bakewell)

SOIL CONSERVATION SERVICE MAINTENANCE

A concurrent resolution urging the Congress of the United States to maintain the funding and programs of the United States Department of Agriculture's Soil Conservation Service to assure the current level of technical assistance available to soil conservation districts.

WHEREAS, soil and water are state and national treasures; and

WHEREAS, by the establishment of the United States Department of Agriculture's Soil Conservation Service, our soils were designated as a public resource, inferring governmental assistance in the stewardship of the land; and

WHEREAS, the Soil Conservation Service has the responsibility of providing needed technical assistance to soil conservation districts on all soil and water conservation problems, including programs to prevent soil erosion, provide soil mapping, develop watersheds, and prevent flood damage; and

WHEREAS, these programs were planned and executed in cooperation with numerous state and federal agencies and private cooperators; and

WHEREAS, the 1982 National Resource Inventory showed that 42 percent of this state's cropland, approximately 11.4 million acres, is eroding at a rate exceeding tolerable soil losses and 13 percent of the cropland, approximately 3.5 million acres, is eroding at a rate double the tolerable soil loss limits; and

WHEREAS, the Soil Conservation Service annually provides conservation services to stem soil and water loss to over 18,000 landowners in the state of North Dakota, assisting in the application of over 8,000 conservation practices and the development of resource plans on nearly one million acres; and

WHEREAS, the Soil Conservation Service provides leadership in the cooperative soil survey and supports the North Dakota Soil

Survey Program through the services of 30 soil scientists, resulting in the survey of over 67 percent of the state's land; and

WHEREAS, over 10 million acres of the remaining land in North Dakota which has not been surveyed, is cropland and has high priority to be surveyed; and

WHEREAS, the Soil Conservation Service provides technical and financial assistance to the Great Plains Conservation Program in 38 counties in North Dakota, under 622 contracts with landowners, covering approximately one million acres; and

WHEREAS, the Soil Conservation Program provides technical assistance through the Agricultural Conservation Program which assists approximately 5,600 farmers each year; and

WHEREAS, there are over 220 communities that have flooding problems in North Dakota and over 2.5 million acres of land which receive flood damage each year; and

WHEREAS, the Soil Conservation Service provides technical assistance through the Water Bank Program; and

WHEREAS, the Soil Conservation Service provides assistance through the Small Watersheds Program, with 12 watersheds completed in North Dakota covering approximately 1.5 million acres where flood damages have been reduced; and

WHEREAS, there are five additional watersheds in the construction stage in North Dakota; and

WHEREAS, there have been 17 floodplain management studies completed covering nearly 700 river miles of floodplains, and there is a need for over 25 additional floodplain management studies in the state; and

WHEREAS, the Soil Conservation Service's Floodplain Management Program has assisted state floodplain management programs; and

WHEREAS, through the Resource Conservation and Development Program, the Soil Conservation Service is helping accelerate the conservation, development, and use of natural resources to improve the general level of economic activity and to enhance the environment; and

WHEREAS, citizens throughout North Dakota and the nation recognize that the health, prosperity, and welfare of our present and future citizens depends upon proper conservation of our soil, water, and other natural resources, provided through the assistance of the United States Department of Agriculture's Soil Conservation Service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to maintain the programs and technical assistance now provided by the United States Department of Agriculture's Soil Conservation Service, and the 62 soil conservation districts in the state of North Dakota, to fulfill the intent of assisting in the application of soil conservation practices; 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 chairmen of the Senate and House Appropriation Committees, the Secretary of Agriculture, each member of the North Dakota Congressional Delegation, the Secretary of the Senate of the United States, and the Clerk of the House of Representatives of the United States.

Filed March 12, 1985

CHAPTER 754

HOUSE CONCURRENT RESOLUTION NO. 3055
(Representatives Nowatzki, Stofferahn, Watne)
(Senator Dotzenrod)

PRICING AND PATENTING HERBICIDES AND PESTICIDES

A concurrent resolution urging the Congress of the United States to study and investigate the pricing and patenting of agricultural herbicide and pesticide chemicals.

WHEREAS, safe, cost-effective herbicides and pesticides are tools necessary to sustain modern agriculture, and a continued availability of these chemicals is necessary; and

WHEREAS, federal farm policy partially mandates conservation practices and encourages other conservation practices, including the use of herbicides and pesticides; and

WHEREAS, expenditures by farmers in the United States for costly herbicides and pesticides represent a significant investment in agricultural production, adding to the economic stress currently being experienced by farm producers; and

WHEREAS, farm producers are dependent upon a few manufacturers of herbicides and pesticides, operating in an oligopolistic industry; and

WHEREAS, existing federal laws providing 17-year patent grants tend to stifle competitive production of newly developed farm chemicals; and

WHEREAS, shorter patent grants for these chemicals, more competition in the production of these chemicals, and lower pricing of these chemicals would result in a higher volume of sales, greater farm production, and increased soil conservation practices;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to study the current pricing structure and patent laws pertaining to the production of agricultural herbicide and pesticide chemicals; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the chairmen of the Senate and House Committees on Agriculture, the Secretary of Agriculture, the Department of Commerce's Patent and Trademark Office, and the members of the North Dakota Congressional Delegation.

CHAPTER 755

HOUSE CONCURRENT RESOLUTION NO. 3056
(Representatives Wentz, Kretschmar, Unhjem)
(Senators Holmberg, J. Meyer)

PORNOGRAPHY STUDY

A concurrent resolution directing the Legislative Council to study methods of controlling pornography in this state, with an emphasis on educating the public regarding the harmful effects of pornography.

WHEREAS, pornography in all forms but especially the portrayal of violent and sado-masochistic acts by persons is degrading to women, men, and children and harmful to the family structure; and

WHEREAS, constitutional and other legal theories, techniques, and strategies are constantly being developed to meet the objections which have been raised against legislative attempts to control this undesirable element within our society; and

WHEREAS, the Legislative Assembly should study and stay informed of these legal developments regarding the control of pornography; and

WHEREAS, the general public should be informed regarding the harmful effects of pornography;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study methods of controlling pornography in this state, with an emphasis on educating the public regarding the harmful effects of pornography; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 756

HOUSE CONCURRENT RESOLUTION NO. 3058
(Knudson, Schindler)

PUBLIC SCHOOL FUNDING STUDY

A concurrent resolution directing the Legislative Council to study all facets of the state's finance formulas used in making payments to public elementary and secondary schools for instructional and transportation services and to determine what, if any, changes in those formulas should be made.

WHEREAS, an adequate and equitable system for determining state contributions to finance the cost of public elementary and secondary instruction and transportation to and from school is critical to the progress of those schools and the ultimate education of this state's citizens; and

WHEREAS, the efficient delivery of uniform quality educational services to this state's elementary and secondary school students, including special education students, is a continuing concern and goal of the Legislative Assembly; and

WHEREAS, there appear to be some inequities in the existing formula used in distributing pupil payments for financing public elementary and secondary instruction and for transporting students to and from school;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council identify models such as the Resource Cost Model that can be used to study all facets of the state's finance formulas used in making payments to public elementary and secondary schools for instruction and for transportation and to determine what, if any, changes in those formulas should be made; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 757

HOUSE CONCURRENT RESOLUTION NO. 3059 (Committee on Appropriations)

BLOCK GRANT HEARINGS

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, several of the provisions of the Omnibus Budget Reconciliation Act of 1981 require "public hearings" or require "the legislature of the State [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

WHEREAS, the Forty-ninth 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 1986 and thus its public hearing responsibility for grants not approved by the Forty-ninth Legislative Assembly must be delegated to a legislative entity;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the appropriation bills for the Office of Management and Budget, Department of Human Services, and State Department of Health, 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, 1987; 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 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 Forty-ninth Legislative Assembly through September 30, 1987, and the Budget Section shall utilize such methods and procedures for holding such hearings and giving notice thereof as it deems appropriate.

Filed March 20, 1985

CHAPTER 758

HOUSE CONCURRENT RESOLUTION NO. 3060
(D. Olsen, Hoffner, Klundt, Rydell)

PUBLIC SCHOOL TEACHER RETENTION STUDY

A concurrent resolution directing the Legislative Council to study methods of attracting and retaining qualified teachers in North Dakota public schools.

WHEREAS, a primary interest of this state is to attract and retain well-qualified and effective teachers in the public schools; and

WHEREAS, there is a substantial and growing shortage of teachers qualified to teach in curriculum areas such as mathematics, science, and other critically important subjects; and

WHEREAS, many of the best teachers appear to be leaving the profession, and current policies do not appear to counter this trend; and

WHEREAS, it may be feasible for the state to provide postsecondary education scholarships, tuition waivers, student loan waivers, and other types of programs designed to provide incentives for able college students to enter the teaching profession and to retain those people as teachers in North Dakota public schools; and

WHEREAS, in-service training for teachers, increased teacher compensation and recognition, and other programs may be feasible to retain qualified teachers in North Dakota public schools;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study methods of attracting and retaining qualified teachers in North Dakota public schools; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement those recommendations, to the Fiftieth Legislative Assembly.

Filed March 20, 1985

CHAPTER 759

HOUSE CONCURRENT RESOLUTION NO. 3061 (Strinden)

PERSONAL PROPERTY TAX REPLACEMENT STUDY

A concurrent resolution directing a Legislative Council study of the formula for state distribution of personal property tax replacement revenues to political subdivisions.

WHEREAS, the 1969 Legislative Assembly exempted from personal property taxes all personal property not centrally assessed and provided for distribution of replacement revenue from the state to political subdivisions; and

WHEREAS, the formula for distribution of personal property tax replacement revenues uses 1968 as a base year and provides for adjustment of distributions based upon increases or decreases in real property taxes levied within each political subdivision; and

WHEREAS, although the formula for distribution of personal property tax replacement revenues was adjusted in 1971 and payment dates were modified in 1979, there has been no comprehensive review of the formula since its enactment; and

WHEREAS, there is a need to review changes in real property assessment and taxation to determine whether the formula for distribution of personal property tax revenues adequately addresses the interests of the state and its political subdivisions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the formula for distribution of personal property tax replacement revenues in light of changes in assessment and taxation of property 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 Fiftieth Legislative Assembly.

Filed March 20, 1985

CHAPTER 760

HOUSE CONCURRENT RESOLUTION NO. 3062
(Strinden)PARTIALLY DEPENDENT ELDERLY SERVICES
STUDY

A concurrent resolution directing the Legislative Council to study the need for comprehensive in-home and community support services to maintain, enhance, or prolong the independence and self-support of the partially dependent elderly population, and the possibility of making additional county funds available for such services by eliminating the county contributions to the medical assistance program under Medicaid.

WHEREAS, the elderly population in North Dakota and the nation, particularly over the age of seventy-five, is dramatically increasing in terms of numbers and in terms of a percentage of the total population; and

WHEREAS, independent living for many elderly persons is increasingly difficult, if not impossible, because of failing health, the death of a spouse, lack of in-home and community support services, or numerous other reasons; and

WHEREAS, the institutionalization of partially dependent elderly persons forced by the lack of adequate in-home and community support services tends to result in the deterioration of the elderly persons' conditions, which increases the level of required care and increases the cost to the state as well as to the individuals involved; and

WHEREAS, many, if not all, counties find it increasingly difficult to provide the necessary funds for in-home and community support services at the same time as the counties are providing funds required for the Medicaid medical assistance program and other mandated or emergency services; and

WHEREAS, the past and projected movement of the population of North Dakota has made the distribution of Medicaid medical assistance costs and benefits among the fifty-three counties inequitable; and

WHEREAS, if the state did not pass on to the county governments a percentage of these Medicaid costs, the tax burden would be distributed on a more fair and equitable basis to all the people of the state; and

WHEREAS, study is needed to determine if there is any valid justification for charging part of the Medicaid costs to the county, as many states have chosen not to do so; and

WHEREAS, the county government has little, if any, control over Medicaid expenditures, or over containing health care costs; and

WHEREAS, comprehensive in-home and community support services will extend the productivity and happiness of the elderly who are unable to exercise full independence, thus limiting the related costs of care to the state as well as the individual;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the need for comprehensive in-home and community support services to maintain, enhance, or prolong the independence and self-support of the partially dependent elderly population, and also study the possibility of making additional funds available to the counties by progressively eliminating the county contribution to the Medicaid medical assistance program over several bienniums; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 761

HOUSE CONCURRENT RESOLUTION NO. 3063
(Strinden)

STATE LAW ENFORCEMENT SYSTEM STUDY

A concurrent resolution directing the Legislative Council to conduct a study of the structure of the state law enforcement system in North Dakota.

WHEREAS, effective law enforcement depends in part upon stability in personnel and in long-range policy; and

WHEREAS, appointment of state law enforcement leaders whenever certain elective positions change hands tends to destabilize the state law enforcement system; and

WHEREAS, the department heads of certain state law enforcement agencies may be better able to pursue effective long-range law enforcement policies if their recruitment and tenure are protected by some other appointment process; and

WHEREAS, standards for law enforcement training are established by the Attorney General, while the Law Enforcement Training Center is supervised by the State Highway Patrol; and

WHEREAS, there are a number of divisions and departments involved in statewide law enforcement with varying degrees of supervision by different elected officials;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the coordination of law enforcement training personnel and standards and the career status of law enforcement officials within the state with a view toward improving law enforcement training and protecting law enforcement officials from the uncertainties of the political 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 Fiftieth Legislative Assembly.

Filed March 20, 1985

CHAPTER 762

HOUSE CONCURRENT RESOLUTION NO. 3064 (Strinden)

ENHANCED EMERGENCY TELECOMMUNICATIONS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of establishing an enhanced 911 emergency telecommunications system for the state.

WHEREAS, developments in telecommunication have made it possible to quicken response time to emergency calls for law enforcement, fire, medical, rescue, and other emergency services; and

WHEREAS, a statewide emergency telecommunications system may allow quicker response by state and local officials to emergency situations in North Dakota; and

WHEREAS, the enhanced 911 emergency telecommunications system provides selective routing of calls, which makes it possible for calls to be routed directly to local emergency dispatchers; and

WHEREAS, the enhanced 911 emergency telecommunications system has automatic number and location identification systems which provide the emergency dispatcher with the number of the telephone being used to make the call and its location; and

WHEREAS, the Minneapolis-St. Paul metropolitan area and the state of Connecticut have enhanced 911 emergency telecommunications systems;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility of developing a statewide enhanced 911 emergency telecommunication system;

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fiftieth Legislative Assembly.

Filed March 20, 1985

CHAPTER 763

HOUSE CONCURRENT RESOLUTION NO. 3065 (Representatives Strinden, Mertens) (Senators Nething, Heigaard)

WETLANDS STUDY

A concurrent resolution directing the Legislative Council to study North Dakota's wetlands.

WHEREAS, North Dakota's 32 million acres north and east of the Missouri River are the center of the prairie pothole region, containing most of the remaining wetlands in the prairie pothole region of the United States; and

WHEREAS, the legislative assembly recognizes the importance of wetlands, and further recognizes that between two and three million acres of wetlands remain in North Dakota; and

WHEREAS, the legislative assembly recognizes that North Dakota's wetlands produce from 2.5 million to 6 million ducks each year, depending on the wet and dry cycle, that wetlands can moderate the extremes in the water flow and have value as natural flood control mechanisms, that wetlands can aid in water purification by trapping, filtering, and storing sediment and other pollutants and by recycling nutrients, that wetlands may serve as ground water recharge areas, and that wetlands function as nursery areas for numerous aquatic animal species and are habitat for a wide variety of plant and animal species; and

WHEREAS, the legislative assembly finds that 4.8 million acres of land in North Dakota are covered by easements held by the United States Fish and Wildlife Service and that within those 4.8 million acres of land there are approximately 760,000 acres of wetlands for which farmers have been paid to not drain, fill, or burn those wetlands; and

WHEREAS, the legislative assembly finds that there may be many more acres of wetlands within the 4.8 million acres of land controlled by the United States Fish and Wildlife Service, depending on the wet and dry cycle, which cannot be drained, burned, or filled because they are covered by the restrictions contained in the easements held by the United States Fish and Wildlife Service, even though farmers have received no payments for the restrictions on such wetlands; and

WHEREAS, the United States Fish and Wildlife Service holds easements for an additional 66,000 acres in North Dakota which are part of National Wildlife Refuges, and that the United States also owns in fee an additional 430,000 acres of land in North Dakota for wetland and waterfowl habitat preservation; and

WHEREAS, the legislative assembly recognizes that the remaining wetlands in North Dakota not preserved through government ownership are a valuable resource of state, national, and international significance; and

WHEREAS, the legislative assembly is prepared to support existing and additional programs for the preservation of North Dakota's remaining wetlands, including funding of those programs, and also provide for strict enforcement of North Dakota's drainage laws to protect wetlands, if it is in the best interests of our state and our nation; and

WHEREAS, the legislative assembly finds that information upon which to make decisions concerning wetlands is lacking; and

WHEREAS, the legislative assembly declares that a long-term plan must be developed concerning the amount of wetlands which exist in North Dakota, the amount of wetlands under federal or state government ownership, the location of North Dakota's remaining wetlands, the amount of wetlands which should be preserved in public or private ownership in North Dakota, the manner in which wetlands should be preserved if additional wetlands need to be preserved, the number of waterfowl that North Dakota produces each year, the agricultural benefits that are foreclosed if wetlands are not drained, the cost to farmers of not draining their wetlands, the impact of wetlands on water resource development in North Dakota, and other related issues;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is hereby directed and authorized to study wetlands in North Dakota and all of the issues related thereto, including the economic and other impacts of our drainage permit laws; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to request the assistance of the United States Fish and Wildlife Service, the North Dakota Game and Fish Department, the North Dakota Parks and Recreation Department, the North Dakota State Water Commission, and private conservation organizations to assist in the study of wetlands and related issues and make recommendations concerning state legislative policy and necessary legislation; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to provide strict enforcement of North Dakota drainage

laws, additional programs to preserve wetlands, and funding of such programs, if the findings and recommendations of the Legislative Council are that additional wetlands in North Dakota should be preserved and that enhanced management and development of wetland and waterfowl habitat is desirable, and that such recommendations and proposed legislation be presented to the Governor of North Dakota and to the Fiftieth Legislative Assembly.

Filed March 28, 1985

CHAPTER 764

HOUSE CONCURRENT RESOLUTION NO. 3066
(Representatives Strinden, Mertens)
(Senators Nething, Heigaard)

MISSOURI RIVER BANK STABILIZATION

A concurrent resolution requesting the United States Congress and the United States Army Corps of Engineers to assume the responsibility for Missouri River bank erosion in North Dakota and to complete a program of bank stabilization and maintenance along the Missouri River between the Garrison Dam and the Oahe Reservoir.

WHEREAS, the Flood Control Act of 1944, as amended by legislation sponsored by Senators O'Mahoney and Milliken, assured all 10 states within the Missouri River Basin equal benefits under a control and management program which came to be commonly known as the Pick-Sloan Plan; and

WHEREAS, the Congress has directed the United States Corps of Engineers to build, operate, and maintain all the elements of the Pick-Sloan Plan; and

WHEREAS, the Pick-Sloan Plan provided for major flood control benefits, recreational benefits, power supply benefits, and certain navigational benefits for states lying below Sioux City, Iowa, through construction of large reservoirs in states lying above that point; and

WHEREAS, the Pick-Sloan reservoirs have been in place for 30 years, thus providing the downstream states all the benefits promised in the Pick-Sloan Plan for the past 30 years; and

WHEREAS, construction of facilities under the Pick-Sloan Plan has, to date, resulted in two billion dollars of flood protection to downstream interests which continue to accrue and has allowed them to develop the floodplain of the Missouri 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, to provide for the construction of the Pick-Sloan Plan the state of North Dakota has sacrificed over 550,000 acres of land including several cities and many established farms; and

WHEREAS, few, if any, of the commitments made to North Dakota in return for its sacrifices under the Pick-Sloan Plan have been fulfilled despite great efforts by North Dakota's Congressional Delegation, Legislative Assemblies, Governors, and other state officials, and despite continuing strong support by the citizens of the state; and

WHEREAS, almost two-thirds of the 2.25 million megawatt hours of cheap hydroelectric power generated by Garrison Dam in North Dakota built by the Pick-Sloan Plan is utilized in states outside of North Dakota; and

WHEREAS, the lands adjacent to the Missouri River between the Garrison Dam and the Oahe Reservoir have been and will continue to be seriously eroded and permanently lost by the local landowners and 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 in adjacent land, and is increasing the frequency and severity of ice jam hazards and has, according to recent Corps of Engineers' pronouncements, endangered 6,000 acres of land containing 45 homes and valuable farmland; and

WHEREAS, a similar bank erosion problem exists for a 60-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, the United States Army Corps of Engineers have stated in their 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 valley lands. This process, unless halted, would eventually transform the present river into a wide area of sand bars and channels, occupying an increasing proportion of the valley width between the bluffs";

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly requests the United States Congress to assume the responsibility for the protection of lands now endangered along the Missouri River in North Dakota by the operation of the Pick-Sloan Plan; and

BE IT FURTHER RESOLVED, that the Congress of the United States authorize and provide funds to the Corps of Engineers for a program for the completion of protection of affected lands along the

Missouri River, and for the maintenance of the installed protective works; and

BE IT FURTHER RESOLVED, that funding for this project shall not be a normal federal water project appropriation, but instead shall be charged to the maintenance budget of the Pick-Sloan Plan; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the North Dakota, South Dakota, Nebraska, and Montana Congressional Delegations, the commanding general of the United States Army Corps of Engineers, the Secretary of the Interior of the United States, the Governor of North Dakota, and the North Dakota State Water Commission.

Filed March 20, 1985

CHAPTER 765

HOUSE CONCURRENT RESOLUTION NO. 3067
(Strinden)

VOCATIONAL EDUCATION SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of placing the delivery of vocational education services and programs under the supervision of the Superintendent of Public Instruction, to review the administrative structures for the delivery of vocational education services and programs in other states, and to review federal requirements regarding the delivery of vocational education services and programs by states.

WHEREAS, it is the responsibility of the state to ensure the wisest and most efficient use of the state's resources; and

WHEREAS, to maintain the efficient and effective organization of state government it is properly the duty of the Legislative Assembly to review and coordinate continuously the functions of the various state agencies and boards; and

WHEREAS, the delivery of vocational education services and programs is currently the responsibility of the State Board of Vocational Education, the staff of which carries out a variety of functions regarding the delivery of vocational education services and programs; and

WHEREAS, the Superintendent of Public Instruction is a member of the State Board of Public School Education whose members also serve as the State Board of Vocational Education; and

WHEREAS, there may exist some duplication in the educational services provided and personnel employed by the Superintendent of Public Instruction and the State Board of Vocational Education;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of placing vocational education under the supervision and authority of the Superintendent of Public Instruction, review the administrative structures for the delivery of vocational education services and programs in states, and review federal requirements regarding the delivery of vocational education services and programs at the state level; 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 Fiftieth Legislative Assembly.

CHAPTER 766

HOUSE CONCURRENT RESOLUTION NO. 3068
(Representatives Hedstrom, Dalrymple, Kent)
(Senator Adams)

HIGHWAY PATROL ANNIVERSARY

A concurrent resolution congratulating the North Dakota Highway Patrol, and the officers and employees of the North Dakota Highway Patrol, on the patrol's 50th anniversary.

WHEREAS, during the December 1934 meeting of the North Dakota Peace Officers Association, a resolution was passed calling for the creation of a statewide organization to assist in the increasing number of traffic accidents in the state; and

WHEREAS, the North Dakota Highway Patrol was created in 1935 by the Twenty-fourth Legislative Assembly; and

WHEREAS, the North Dakota Highway Patrol has since been vested with a myriad of authorities and duties, including conducting criminal investigations and enforcing the laws of the state; and

WHEREAS, the North Dakota Highway Patrol, and its officers and employees, have fulfilled these duties in a professional, efficient, and thorough manner; and

WHEREAS, the feats of the North Dakota Highway Patrol, and its officers and employees, merit recognition by the state of North Dakota and its citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly takes great pride and pleasure in extending its heartiest congratulations to the North Dakota Highway Patrol, and its officers and employees, for their superb accomplishments; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to the Superintendent of the North Dakota Highway Patrol.

Filed March 20, 1985

CHAPTER 767

HOUSE CONCURRENT RESOLUTION NO. 3069
(Representatives Timm, Richard)
(Senators Mutch, Satrom)

STREET AND HIGHWAY SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the capability of the various street, highway, and air transportation systems of the state to provide for the efficient transportation of people, goods, commodities, and services and to identify the resources needed to provide adequate and efficient street, highway, and air transportation systems in the future.

WHEREAS, the Thirty-third Legislative Assembly in 1953 declared by legislative enactment, codified as North Dakota Century Code Section 24-01-01, that the streets and highways promote the economic and social progress of this state and that an adequate and integrated system of streets and highways is essential to the general welfare of this state; and

WHEREAS, air transportation is an increasingly vital link between communities within and without the state; and

WHEREAS, transportation of people, goods, commodities, and services via the railroads has declined and will continue to decline in the foreseeable future due to transportation concepts within the railroad industry and the abandonment of various branch lines serving local communities; and

WHEREAS, the diminishing role of the railroads as a provider of transportation services has thrust a greater burden upon the existing street, highway, and air transportation systems of this state to provide for the void created by the lack of railroad service; and

WHEREAS, to meet the transportation needs of the nation and state the legislative bodies of the federal and state governments have provided for the operation of ever larger and heavier motor vehicles; and

WHEREAS, the citizens of this state have grown more dependent upon motor vehicles and aircraft as a means of transportation for social and economic activities; and

WHEREAS, accompanying the changes in the available modes of transportation has been a dramatic change in the economic activity of the state, which has grown more dependent upon the street, highway, and air transportation systems as a means of transportation; and

WHEREAS, these changes have resulted in the necessity of changing priorities for the state's street and highway system; and

WHEREAS, the total mileage of the street and highway system in North Dakota cannot be maintained and preserved at the desired levels of service within the current financial resources available to those entities responsible for such highway systems; and

WHEREAS, the various governmental entities charged with providing an adequate and integrated system of streets and highways have been confronted with continuous and growing demands upon the highway systems of the state without the means or the methods to provide for such demands on a priority basis;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the adequacy of the present street, highway, and air transportation systems of the state to provide for the efficient transportation of people, goods, commodities, and services; to identify major problems impeding state and local entities from effectively dealing with the problem; and to furnish potential solutions whereby the state and local entities are given the means and methods to effectively provide for the improvement of the street, highway, and air transportation systems for present and future uses; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement its recommendations, to the Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 768

HOUSE CONCURRENT RESOLUTION NO. 3070
(Representatives Kent, Lipsiea)
(Senators Tweten, Mutch)

SOLID WASTE DISPOSAL STUDY

A concurrent resolution directing the Legislative Council to study the problems of solid waste disposal in landfills in North Dakota.

WHEREAS, inefficient and improper methods of managing solid wastes create serious hazards to the public health, result in scenic blights, cause pollution of air and water resources, cause accident hazards, increase rodent and insect disease vectors, have an adverse effect on land values, create public nuisances, and otherwise interfere with community life and development; and

WHEREAS, it is in the public interest to encourage and promote the proper emplacement of material into subsurface strata for the purpose of storage and retrieval of material, and to promote the terminal disposal of municipal, industrial, and domestic waste in such a manner as to prevent the contamination or pollution of surface and ground water sources or any other segment of the environment and to avoid creation of secondary hazards of a geologic nature; and

WHEREAS, North Dakota Century Code Chapters 23-20.2 and 23-29 and regulations adopted pursuant to those chapters, regulating the disposal of wastes and landfill seepage into water sources, restrict the siting of solid waste landfills; and

WHEREAS, local zoning restrictions also limit the availability of landfill sites; and

WHEREAS, the amount and volume of solid waste which must be disposed of increase daily and land suitable and available for landfill sites is becoming increasingly difficult to find;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the problems of solid waste disposal, including the problems associated with the use and availability of landfills in 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 Fiftieth Legislative Assembly.

CHAPTER 769

HOUSE CONCURRENT RESOLUTION NO. 3071 (Committee on Appropriations)

PUBLIC EMPLOYEE LIABILITY INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the extent liability insurance coverage is provided for state and political subdivision employees and the necessity and desirability of providing or authorizing that coverage, and the desirability of expanding governmental immunity for political subdivisions.

WHEREAS, state officers and employees are subject to causes of actions based on negligence and wrongful acts, errors, and omissions while acting in their official capacities or scope of employment; and

WHEREAS, the North Dakota Century Code Section 32-12.1-15 authorizes the state or any agency to insure against liabilities for its own protection and the protection of any state employee; and

WHEREAS, the North Dakota Century Code Section 15-10-17 authorizes the State Board of Higher Education to insure itself, its employees, and its officers against any liability it deems advisable; and

WHEREAS, the types and the amounts of liability insurance coverage obtained by agencies varies greatly by agency; and

WHEREAS, the projected premiums for liability insurance coverage for many agencies for the 1985-87 biennium are substantially higher than premiums paid for the 1983-85 biennium; and

WHEREAS, the amount of liability coverage necessary for state officials and employees should be established; and

WHEREAS, it may be possible to provide liability coverage for state employees under a blanket policy, rather than under separate policies purchased by each agency; and

WHEREAS, the Board of Higher Education has employed a consultant to study liability coverage of state employees at

institutions under the direction of the Board of Higher Education; and

WHEREAS, North Dakota Century Code Chapter 32-12.1 pertains to the liability of political subdivisions, and enables political subdivisions to pay and compromise claims and judgments; and

WHEREAS, political subdivisions must also maintain liability insurance coverage to provide coverage for liability resulting from the actions of its employees; and

WHEREAS, the provisions of North Dakota Century Code Chapter 32-12.1 should be reviewed to determine whether any changes are necessary to the substantive provision of that chapter;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the extent liability insurance coverage is provided for state or political subdivision employees to determine the necessity and desirability of providing that coverage, including which employees need or should have coverage, the kind of coverage and the amount of coverage necessary or appropriate, and whether liability coverage could be obtained at less cost under a blanket policy rather than separate policies; and

BE IT FURTHER RESOLVED, that the Legislative Council study the governmental immunity of political subdivisions and the desirability of expanding the governmental immunity of 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 Fiftieth Legislative Assembly.

Filed March 29, 1985

CHAPTER 770

HOUSE CONCURRENT RESOLUTION NO. 3073
(Vander Vorst)

OTHER STATE PUBLIC SCHOOL TUITION STUDY

A concurrent resolution directing the Legislative Council to study the tuition laws for elementary and secondary school students who cross the North Dakota-South Dakota border to attend school.

WHEREAS, the states of North Dakota and South Dakota have generally cooperated in the past regarding the payment of tuition for students crossing the North Dakota-South Dakota border to attend elementary and secondary schools; and

WHEREAS, elementary and secondary school students living along the North Dakota-South Dakota border should be permitted the convenience and freedom, when possible, to attend schools located nearest them even if the school is located in a state other than their state of residence; and

WHEREAS, some conflicts have recently arisen regarding the payment of tuition for certain students crossing the North Dakota-South Dakota border; and

WHEREAS, it is in the best interests of all parties involved to resolve those conflicts and to avoid possible future costly legal disputes;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council conduct a study of the tuition laws for elementary and secondary school students who cross the North Dakota-South Dakota border to attend school; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to appoint a special subcommittee of the Legislative Council's interim committee assigned this study to meet jointly with a like committee from South Dakota in an attempt to resolve cooperatively and avoid future tuition conflicts for students crossing the North Dakota-South Dakota border; 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 Fiftieth Legislative Assembly.

Filed March 20, 1985

CHAPTER 771

HOUSE CONCURRENT RESOLUTION NO. 3074
(Representative Conmy)
(Senator Olson)

TAX COMMISSIONER CONFIDENTIALITY STUDY

A concurrent resolution calling for a Legislative Council study of the confidentiality statutes governing the office of the tax commissioner.

WHEREAS, the North Dakota state tax commissioner has broad discretionary powers; and

WHEREAS, the tax returns of individuals and corporations are deemed by federal and state law to be confidential records; and

WHEREAS, legislation imposing forms of taxation upon individuals and corporations is often complex and subject to differing interpretations; and

WHEREAS, based upon press releases and press conferences staged by the tax commissioner, large payments, amounts not specified, have been received from "out-of-state corporations", not identified, based upon compromises, details not published, through the efforts of the tax commissioner; and

WHEREAS, it appears that taxes due cannot be constitutionally compromised, but audits and interpretations leading to the assessment of taxes may be administratively adjusted by the tax commissioner; and

WHEREAS, the public determination of whether such administrative adjustments are truly in the best interests of the state of North Dakota cannot be made, as the actions of the tax commissioner are shielded from the cleansing and regulating effect

of media exposure through the operation of the confidentiality statutes; and

WHEREAS, the exercise of administrative discretion by the tax commissioner in the secrecy afforded by the confidentiality statutes may create an unhealthy climate conducive to corruption; and

WHEREAS, the tax commissioner, if accused of improper conduct, would be unable to adequately defend the administrative discretionary actions because of the confidentiality statutes; and

WHEREAS, it may be in the best interests of the state of North Dakota to have final decisions on audit adjustments and interpretations made by a board of elected officials rather than by a sole individual;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the existing confidentiality statutes and the possibility of opening the administrative actions of the tax commissioner to the cleansing effect of public scrutiny and the feasibility of creating a review and final approval process of tax dispute settlement by a board of elected state officials rather than leaving it to the sole discretion of one individual operating in secrecy; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 772

HOUSE CONCURRENT RESOLUTION NO. 3075
(Kretschmar)

UNIFORM LAWS STUDY

A concurrent resolution directing the Legislative Council to study the desirability of adopting uniform or model laws where uniformity in state laws is desirable and practicable.

WHEREAS, it is a legislative responsibility to review existing laws to ensure that they are modern, understandable, and efficient, and that they properly address the problems they are intended to rectify; and

WHEREAS, North Dakota leads the nation with respect to the number of uniform or model acts adopted as a means to promote uniformity in subject areas which need modernization, which are appropriate for uniformity in application, or which may be subject to federal preemption or control; and

WHEREAS, the Legislative Council is statutorily required to study and promote uniformity of legislation in the United States upon subjects upon which uniformity is desirable; and

WHEREAS, the Forty-ninth Legislative Assembly considered, but for various reasons did not adopt, uniform Acts concerning personal relations, business practices, property interests, medical treatment, and probate procedures;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the desirability of adopting the uniform or model acts considered, but not adopted by, the Forty-ninth Legislative Assembly, and any other uniform or model acts approved by the National Conference of Commissioners on Uniform State Laws the Legislative Council may select; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 773

HOUSE CONCURRENT RESOLUTION NO. 3076
(Committee on Appropriations)

STATE PAY PRACTICES STUDY

A concurrent resolution directing the Legislative Council to study state agency and institution pay practices.

WHEREAS, state agencies and institutions should use equal pay for equal work as a basis for compensation increases to their employees; and

WHEREAS, state agencies and institutions should use uniform procedures to evaluate employee performance; and

WHEREAS, procedures used by state agencies and institutions to determine the amount of employee compensation increases are not uniform and sometimes not based upon formal evaluation techniques;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council conduct an interim study of state agency and institution policies and procedures used for determining the level of employee compensation and compensation increases, including a comprehensive study of each of the following:

1. The State Central Personnel Division's market survey techniques, including the determination of equivalent job values in setting pay ranges;
2. The problem of the need or perceived need for major equity adjustments in salaries to place state employees in the proper steps in their pay grades based on years of service and job performance;
3. The lack of an agencywide job evaluation system based on uniform standards of objective criteria to be used by supervisors in evaluating employees for pay increases and promotions;

4. The staffing needs of the State Central Personnel Division to adequately perform its functions, including the provision of technical assistance to offices and agencies which do not have staff which specializes in personnel matters; and

BE IT FURTHER RESOLVED, that the Legislative Council determine the feasibility of the State Central Personnel Division establishing uniform guidelines for making compensation increases for employees of the classified system; and

BE IT FURTHER RESOLVED, that the Legislative Council make its report and recommendations, together with any legislation required to implement the recommendations, to the Fiftieth Legislative Assembly.

Filed March 29, 1985

CHAPTER 774

HOUSE CONCURRENT RESOLUTION NO. 3077
(Unhjem)IMPLEMENTATION OF DEINSTITUTIONALIZATION
STUDY

A concurrent resolution directing the Legislative Council to study the ongoing implementation of the federal district court order concerning deinstitutionalization of developmentally disabled persons.

WHEREAS, on August 31, 1982, the United States District Court issued its decision in the matter of Association for Retarded Citizens of N.D. v. Olson, 561 F.Supp. 473 (1982) ("ARC"); and

WHEREAS, on March 7, 1984, the district court issued an implementation order expanding on its decision and containing numerous provisions and requirements imposed on the state; and

WHEREAS, the implementation order required the state to seek placement of the developmentally disabled in existing licensed or accredited facilities, or to create community-based residential services meeting standards sufficient to reduce the number of residents at the Grafton State School to not more than 450 persons by July 1, 1987, and by that date to present to the court a program to reduce the residents by at least an additional 200 persons before July 1, 1989; and

WHEREAS, this requirement was amended by a November 7, 1984, district court order that created an additional deadline for reducing the number of residents at the Grafton State School to not more than 552 persons by July 1, 1985; and

WHEREAS, the implementation order requires the state to develop a plan and timetable to ensure that all buildings at the Grafton and San Haven state institutions meet federal and state standards on specified deadlines; and

WHEREAS, the district court retained continuing jurisdiction over the matter until the orders of the court are fully implemented; and

WHEREAS, the state is continuing its good faith efforts to comply with the court-established requirements; and

WHEREAS, such efforts involve the development of plans and procedures with far-reaching ramifications, and involve the appropriation and expenditure of large amounts of tax dollars; and

WHEREAS, the Legislative Assembly should take all necessary and appropriate steps to keep itself appraised of developments concerning these matters;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the ongoing implementation of the court order issued in the ARC action by monitoring the specific actions proposed and taken in this regard, and investigating the cost impacts of proposed implementation plans, the effects of such plans as proposed or adopted on persons in this state including the developmentally disabled, the long-term budget effects of proposed or adopted implementation plans, and whether proposed plans are in the best interest of all the people involved; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 775

HOUSE CONCURRENT RESOLUTION NO. 3078 (Wald)

INSURANCE PLANS STUDY

A concurrent resolution directing the Legislative Council to study the regulation of property and casualty insurance plans created by local groups or associations.

WHEREAS, certain groups and associations have created insurance plans providing property and casualty insurance; and

WHEREAS, policies under these plans may be issued at rates that are inadequate to pay the cost of underwriting the policies, and may eventually cause the cancellation of the plan; and

WHEREAS, upon the cancellation of these insurance plans, other providers of property and casualty insurance have been unable to meet the sudden, unexpected demands for insurance coverage; and

WHEREAS, review of the authority of the commissioner of insurance to regulate the rates charged under these insurance plans and to regulate the cancellation of these policies is necessary to determine if legislative action is desirable;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the desirability of enacting legislation to regulate specifically plans that provide property and casualty insurance by groups and associations, the premium rates charged under the plans, and the cancellation provisions of the plans; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 776

HOUSE CONCURRENT RESOLUTION NO. 3079
(Representatives Graba, DeMers, Sauter)
(Senator Shea)

ELDERLY TRANSPORTATION STUDY

A concurrent resolution directing the Legislative Council to study the adequacy and appropriateness of the funding of transportation assistance programs for the elderly and handicapped in North Dakota.

WHEREAS, the federal Transportation Assistance for Elderly and Handicapped, Community-Based Transportation Services for Seniors to Facilitate Access to Social and Nutritional Services, Transportation Assistance for Public Transportation in Rural Areas, and the Urban Transit Funds programs were established to assist states in providing transportation assistance to the elderly and the disabled; and

WHEREAS, the approximate annual ridership totals for these respective programs in North Dakota in 1984 were 123,000, 202,800, 350,000, and 900,000; and

WHEREAS, the approximate annual federal funding for these programs in North Dakota is \$187,000, \$250,000, \$385,000, and over \$1.5 million, respectively, in the form of operating grant assistance; and

WHEREAS, the President's fiscal year 1986 budget proposes the ending of all operating grant assistance and a significant reduction in overall mass transit funding; and

WHEREAS, the loss of such operating funds might seriously undercut the operation of these programs in North Dakota and might result in the elimination of services or an increase in user costs to levels above the reach of the intended beneficiaries;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the impact of proposed cutbacks in federal funding for transportation assistance programs benefiting the elderly and disabled, and the adequacy and appropriateness of funding programs by which transportation assistance is made available to the elderly and the disabled in 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 Fiftieth Legislative Assembly.

CHAPTER 777

HOUSE CONCURRENT RESOLUTION NO. 3080
(Sauter, Moore, Rydell, Oban, Schneider)

STATE EMPLOYEE CAFETERIA BENEFITS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a "cafeteria" style benefit program for state employees.

WHEREAS, the state offers several benefit programs for state employees, including health insurance, retirement, and deferred compensation; and

WHEREAS, state employees have limited options with regard to structuring the usage of these programs to suit individual needs; and

WHEREAS, the cost to the state of providing some of these benefit programs has been rising, particularly in the state group health insurance program; and

WHEREAS, the federal Internal Revenue Code currently authorizes "cafeteria" employee benefit plans under which employees are provided by their employer with a credit to buy various benefits and levels of benefits at fixed or predetermined charges with each employee given the option to choose the benefit programs and levels of programs which best suit the employee's needs; and

WHEREAS, a "cafeteria" benefit plan for state employees could result in the containment of the costs of providing certain benefit programs, the reduction of employee taxes, and the flexibility to employees to adjust the benefits to individual needs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the feasibility and desirability of establishing a "cafeteria" style benefit program for state employees as authorized under the federal Internal Revenue Code; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 778

HOUSE CONCURRENT RESOLUTION NO. 3082
(Wald)

INSURANCE CANCELLATION-NONRENEWAL STUDY

A concurrent resolution directing the Legislative Council to study the cancellation, nonrenewal, and declination procedures and requirements for property and casualty insurance and automobile insurance.

WHEREAS, 1983 House Bill No. 1238, as codified in North Dakota Century Code Section 26-02-47, et seq., and recodified in Section 26.1-39-10, et seq., regulates the cancellation, nonrenewal, and declination of individual line property and casualty insurance, providing coverage for residential real and personal property damage and legal liability arising out of bodily injury; and

WHEREAS, the cancellation and nonrenewal of automobile insurance is regulated by North Dakota Century Code Section 26-02-32, et seq., recodified in Section 26.1-40-01, et seq.; and

WHEREAS, commercial property and casualty insurance is not regulated by the cancellation, nonrenewal, and declination provisions in Section 26-02-47, et seq.; and

WHEREAS, failure of these property and casualty insurance cancellation, nonrenewal, and declination provisions to apply to commercial insurance may result in inequities, hardships, and economic loss;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the provisions regulating cancellation, nonrenewal, and declination of property and casualty insurance policies and automobile insurance policies and determine the desirability of enacting requirements for the cancellation, nonrenewal, and declination of commercial property and casualty insurance; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 779

HOUSE CONCURRENT RESOLUTION NO. 3083
(Representatives Wald, Whalen)
(Senator Tallackson)

FINANCIAL INSTITUTION INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the public policy of enacting legislation to regulate the issuance of life, property, casualty, and accident and health insurance by insurance agents who are owned or controlled by financial institutions.

WHEREAS, insurance agents controlled, owned, or otherwise influenced by financial institutions sell insurance policies to customers of the financial institutions; and

WHEREAS, financial institutions that own or control agents may exercise undue or coercive influence upon people receiving loans from the financial institutions, forcing the purchase of life, accident and health, property, and casualty insurance from the financial institution's insurance agent; and

WHEREAS, North Dakota Century Code Section 26.1-04-04, which prohibits financial institutions from coercing clients into purchasing insurance from a particular company or agent, is apparently difficult to enforce; and

WHEREAS, accessibility of loan information for agents controlled by financial institutions may inhibit other insurance agents from competing on the same level as the agents controlled by financial institutions; and

WHEREAS, this accessibility of loan information may violate the confidentiality requirements imposed upon financial institutions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the public policy of regulating the issuance of life, property, casualty, and accident and health insurance pursuant to a loan agreement by insurance agents controlled or owned by financial 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 780

HOUSE CONCURRENT RESOLUTION NO. 3084
(Kloubec)

STATE ACCOUNTING SYSTEM STUDY

A concurrent resolution directing the Legislative Council to monitor and study the implementation of the new state accounting system.

WHEREAS, the 1981 Legislative Audit and Fiscal Review Committee recommended a complete revision of the state accounting system; and

WHEREAS, the Legislative Assembly in 1981, by law, directed changes in the accounting system and appropriated sufficient funds for its design and beginning implementation; and

WHEREAS, it is very important that the state of North Dakota have a complete and modern financial reporting and accounting system; and

WHEREAS, the Office of Management and Budget recommends that the Forty-ninth Legislative Assembly delay implementation of the system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council, through the Legislative Audit and Fiscal Review Committee, monitor and study the Office of Management and Budget's implementation of changes to the state accounting system; and

BE IT FURTHER RESOLVED, that the Office of Management and Budget provide the Legislative Audit and Fiscal Review Committee such assistance as may be necessary for the committee to monitor and study the implementation of changes to the system; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 781

HOUSE CONCURRENT RESOLUTION NO. 3085 (House Appropriations Committee)

STATE AGENCY COMPUTER USE

A concurrent resolution directing the Legislative Council to study the maximum usage and accessibility of computers for all state agencies and institutions.

WHEREAS, Central Data Processing was created in 1969 as a result of an interim study of the state's then decentralized data processing efforts; and

WHEREAS, the office of Central Data Processing has been placed within the Office of Management and Budget, and is headed by a director who is in charge of supervision and regulation of electronic data processing activities of the executive branch state agencies, institutions, departments, and boards; and

WHEREAS, Central Data Processing also provides data processing services to the legislative and judicial branches of state government; and

WHEREAS, Central Data Processing provides services through its office and over 700 communicating devices connected to Central Data Processing's main computer, to over 40 state agencies and departments; and

WHEREAS, Job Service North Dakota, the Adjutant General, and the institutions under the control of the State Board of Higher Education are excepted from the services provided by Central Data Processing, and have separate computer facilities; and

WHEREAS, in 1973 the Legislative Assembly appropriated funds to establish a higher education computer network, which is being extended to all institutions under the State Board of Higher Education; and

WHEREAS, changes in computer hardware and software, the availability of microcomputers, and other changes and modernizations in the computer industry have advanced data storage and data transmission capabilities; and

WHEREAS, these changes may have created new possibilities or alternatives by which the state could maximize its usage and accessibility of computers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the office of Central Data Processing and other state computer systems, to determine the feasibility of maximizing usage and accessibility of state-owned computers for all state agencies and 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 782

HOUSE CONCURRENT RESOLUTION NO. 3086
(Eckroth, Schmidt)

STATE FORESTER STUDY

A concurrent resolution directing the Legislative Council to study the duties, qualifications, and authority of the State Forester, the location of the office of the State Forester, and the placement of the State Forest Service under the jurisdiction of the Board of Higher Education.

WHEREAS, the duties, qualifications, and authority of the State Forester are set forth in North Dakota Century Code Chapter 4-19; and

WHEREAS, North Dakota Century Code Section 4-19-01 requires the State Forester to be a member of the staff of the State School of Forestry as designated by the Board of Higher Education; and

WHEREAS, the qualifications of the State Forester may require further delineation and the position of State Forester may necessitate specialized training at an accredited forestry school; and

WHEREAS, it may be more convenient to locate the office of the State Forester in Bismarck, at the seat of state government to allow for greater interaction with other state agencies, federal agencies, and the legislative assembly; and

WHEREAS, centrally locating the State Forester may reduce expenses and travel costs, and may increase the accessibility of the State Forester's office by private citizens; and

WHEREAS, the present placement of the State Forester under the Board of Higher Education creates a situation where additional funds for education may be channeled through the State Forest Service's budget; and

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the duties, qualifications, and authority of the State Forester, the location of the office of the State Forester, and the desirability of removing the State Forest Service from the jurisdiction of the 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 783

HOUSE CONCURRENT RESOLUTION NO. 3087
(DeMers, Martinson, R. Berg)

HEALTH INSURANCE SELF-ADMINISTRATION STUDY

A concurrent resolution directing the Legislative Council to study the desirability of providing for self-administration of the state uniform group health insurance program.

WHEREAS, the state provides health insurance coverage for public employees in the state through the state uniform group health insurance program; and

WHEREAS, the State Retirement Board, pursuant to chapter 580 of the 1983 Session Laws, established on July 1, 1983, a state self-insurance plan for providing health insurance coverage under an administrative services only (ASO) contract under the state uniform group health insurance program; and

WHEREAS, the self-insured state uniform group health insurance has resulted in increased efficiencies and cost savings to the state; and

WHEREAS, further cost savings and efficiencies may be achieved if the state establishes a self-administered uniform group health insurance program; and

WHEREAS, a self-administered state uniform group health insurance program would allow more state control and could result in additional efficiencies with regard to billing, payment of claims, and ratesetting procedures;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the desirability of providing for the self-administration of the state uniform group health insurance program, including an examination of the cost and administrative benefits that could accrue under a self-administered program; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 784

HOUSE CONCURRENT RESOLUTION NO. 3089
(Kent, Shide, Laughlin)

GRAIN WAREHOUSEMEN INSOLVENCY STUDY

A concurrent resolution directing the Legislative Council to study grain warehousemen insolvencies and insolvencies of grain buying or commission firms, and the feasibility of providing bond coverage for credit-sales contracts.

WHEREAS, grain warehousemen insolvencies have become more prevalent in the last few years due to the current economic difficulties; and

WHEREAS, grain warehousemen insolvencies have been partially caused by the insolvencies of grain buying or commission firms; and

WHEREAS, the insolvencies of grain warehousemen may have a severe economic effect upon the grain producers of the state of North Dakota; and

WHEREAS, North Dakota Century Code Section 60-02-09 requires grain warehousemen to post bonds to protect the holders of outstanding receipts and protect people dealing with the warehousemen; and

WHEREAS, this bond coverage does not extend to the benefit of persons entering into credit-sales contracts; and

WHEREAS, it may be advisable to provide insolvency protection for North Dakota grain producers who sell grain by credit-sales contracts;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the insolvencies of grain warehousemen and grain buying or commission firms, and the feasibility of providing surety bond coverage, insurance coverage, or other insolvency protection for grain producers entering into credit-sales contracts with public warehousemen; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 785

HOUSE CONCURRENT RESOLUTION NO. 3090
(Representatives Nowatzki, Nicholas, A. Olson)
(Senator Vosper)

PEMBINA RIVER BASIN STUDY

A concurrent resolution directing the Legislative Council to study the Pembina River Basin, including soil, water, wildlife, and ecological resource management needs and the potential for the development of recreational and historical resources.

WHEREAS, the Pembina River Basin located in the northeastern portion of the state is an area of rich historical value with a number of historical sites; and

WHEREAS, the soil, water, wildlife, and ecological resource management needs of the basin and surrounding area are important to the preservation of the economy and beauty of this part of the state; and

WHEREAS, recurring flooding of the lower Pembina River Basin continues to be a problem and major concern of the state; and

WHEREAS, the recreational development potential of the Pembina River Basin's natural resources should be studied in order to secure the maximum benefits from those resources for the citizens of this state and in order to promote tourism for the economic betterment of the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the Pembina River Basin, including soil, water, wildlife, and ecological resource management needs and the potential for the development of recreational and historical resources; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement those recommendations, to the Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 786

HOUSE CONCURRENT RESOLUTION NO. 3092
(Sauter, A. Hausauer, Richard, Moore)

TAX STRUCTURE

A concurrent resolution directing the Legislative Council to study the present adequacy and equity of the structure of taxes levied by the state and the prospects for future changes in revenues from the various taxes imposed by the state.

WHEREAS, the ability of the state of North Dakota to provide services to its citizens is dependent upon revenues from the various taxes imposed by the state; and

WHEREAS, many changes in the imposition of taxes, tax rates, and exemptions from taxes have occurred since the tax structure of the state was last comprehensively examined by the Legislative Council; and

WHEREAS, it is essential for the Legislative Assembly to have adequate information on the present burden of state imposed taxes on citizens and industries of the state and to anticipate future changes in revenue from various taxes, particularly taxes imposed on the energy industry in order to formulate policy regarding present and future tax structure;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the adequacy and equity of the present and future tax structure of the state and the anticipated future needs and revenues from those taxes; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 787

HOUSE CONCURRENT RESOLUTION NO. 3093
(Representatives R. Anderson, Hughes, Rice)
(Senators Wenstrom, D. Meyer, Bakewell)

OUTSTANDING YOUNG FARMER CONGRATULATED

A concurrent resolution congratulating Peter Nygaard on being named one of the nation's four outstanding young farmers of 1985 by the United States Jaycees.

WHEREAS, the United States Jaycees give awards to the nation's four outstanding young farmers based on criteria including progress in an agricultural career, extent of soil and water conservation practices, and contributions to the well-being of the state, community, and nation; and

WHEREAS, Peter Nygaard farms 9,300 acres in wheat, barley, safflower, and sunflowers, with winter wheat as his main crop; and

WHEREAS, his experimentation with chemical fallow and continuous cropping no-till systems has contributed to his agricultural success; and

WHEREAS, he is active in the North Dakota Wheat Producers, the National Association of Wheat Growers, and the promotion of farm legislation; and

WHEREAS, he was named the Outstanding North Dakota Farmer by the North Dakota Jaycees in October 1984; and

WHEREAS, he was one of four men chosen from a field of 41 state winners and was honored at the annual Outstanding Young Farmer Award Congress in Great Falls, Montana; and

WHEREAS, he is the tenth North Dakotan to receive this award;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly of the state of North Dakota extends its sincere and hearty congratulations to Peter Nygaard of Williston, North Dakota, on being named one of the nation's four outstanding young farmers of 1985 by the United States Jaycees; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to Peter Nygaard and to the Williston Jaycees.

Filed March 26, 1985

CHAPTER 788

HOUSE CONCURRENT RESOLUTION NO. 3094
(Mertens)
(Approved by the Committee on Delayed Bills)

ALTERNATIVE HIGHER EDUCATION SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of and the various means and methods of, as well as the timing involved in, the development and transition to an alternative structure for the higher education system encompassing all state institutions of higher education in the state of North Dakota, and to study admissions and tuition policies for foreign and nonresident students, and that the Legislative Council conduct the study in cooperation with the Board of Higher Education.

WHEREAS, higher education in North Dakota has become increasingly expensive to the extent that it may be impractical to continue the system as presently operated; and

WHEREAS, elimination of duplicate programs, services, recordkeeping, and administrative personnel at state institutions of higher education may provide substantial savings for North Dakota taxpayers in the future; and

WHEREAS, several other states have alternative systems which may be more cost-effective and efficient than the system that now exists in North Dakota; and

WHEREAS, numerous proposals for restructuring the system of higher education involving many different proposed systems have been considered by the Forty-ninth Legislative Assembly; and

WHEREAS, the number of foreign students, students participating in the Minnesota-North Dakota reciprocity program, and other nonresident students are an important part of the educational, cultural, and financial makeup of the several institutions; and

WHEREAS, there must be cooperation and coordination in identifying the higher education needs, resources, and priorities to ensure that quality education and fiscal responsibility are reconciled in the best interest of the people of the state of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility of and the various means and methods of, as well as the timing involved in, the development and transition to an alternative higher education system encompassing all state institutions of higher education in the state; and

BE IT FURTHER RESOLVED, that this study of the alternative system of higher education in North Dakota include a thorough examination of admissions and tuition policies for foreign students and all nonresident students; and

BE IT FURTHER RESOLVED, that the Legislative Council conduct the study in cooperation with the 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 Fiftieth Legislative Assembly.

Filed April 3, 1985

CHAPTER 789

HOUSE CONCURRENT RESOLUTION NO. 3096
(D. Olsen)
(Approved by the Committee on Delayed Bills)

TUITION RECIPROCITY STUDY

A concurrent resolution directing the Legislative Council to study the positive and adverse impacts of tuition reciprocity agreements on postsecondary educational institutions, the communities where such institutions are located, postsecondary students, and state government.

WHEREAS, the cost of providing postsecondary educational programs continues to increase; and

WHEREAS, there are presently a large number of nonresident and foreign students enrolled in state postsecondary institutions and also a large number of resident students enrolled in similar institutions located outside the state; and

WHEREAS, the State Board of Higher Education has exercised its authority to provide tuition reciprocity for certain nonresident students; and

WHEREAS, the total impact on communities, institutions, students, and state government should be determined before extending, withdrawing from, or making substantial adjustments to tuition reciprocity agreements; and

WHEREAS, tuition reciprocity agreements for vocational education programs have recently been entered into by the State Board of Higher Education;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the positive and adverse impacts of tuition reciprocity agreements on postsecondary educational institutions, the communities where such institutions are located, postsecondary students, and state government; 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 Fiftieth Legislative Assembly.

Filed April 4, 1985

CHAPTER 790

HOUSE CONCURRENT RESOLUTION NO. 3097
(Kingsbury, Gunsch)
(Approved by the Committee on Delayed Bills)

STATE MEDICAL EXAMINER STUDY

A concurrent resolution directing the Legislative Council to study whether there is a need for a medical examiner system in this state, and the feasibility of implementing a medical examiner system that would include the use of a full-time forensic pathologist as chief medical examiner.

WHEREAS, North Dakota has a county coroner system; and

WHEREAS, under this system each county appoints its own coroner, and in 13 of the state's 53 counties the coroner's position is filled by a funeral director or sheriff; and

WHEREAS, none of the counties with physicians as coroners has a forensic pathologist filling the coroner position; and

WHEREAS, forensic pathology is the study of material evidence and the study of the corpse at the scene of the death and in the laboratory to determine from a medical standpoint the cause of death and whether the death may have resulted from criminal actions; and

WHEREAS, authorities estimate that of the approximately 5,500 annual deaths in this state, 1,000 are suspect and should be investigated, and 400 would probably require autopsies; and

WHEREAS, a medical examiner system would not only be concerned with criminal investigations, but also with suspect deaths including death by poison, sudden deaths of apparently healthy persons, deaths in state institutions or while in public custody, deaths from work-related disease, or deaths from diseases that may constitute public health threats; and

WHEREAS, the Forty-ninth Legislative Assembly considered, but did not pass, Senate Bill No. 2441, which would have created a comprehensive statewide medical examiner's system to replace the county coroner system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the existing county coroner system, whether a need exists for a statewide medical examiner system utilizing a forensic pathologist as a state medical examiner, and the feasibility and costs of implementing various forms of a statewide medical examiner system; 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 Fiftieth Legislative Assembly.

Filed April 3, 1985

CHAPTER 791

HOUSE CONCURRENT RESOLUTION NO. 3098
(Representatives Wentz, Riley, Kretschmar)
(Senators Olson, Redlin, Holmberg)
(Approved by the Committee on Delayed Bills)

MARITAL PROPERTY STUDY

A concurrent resolution directing the Legislative Council to study the Uniform Marital Property Act, existing marital property law in this state, and the marital property laws of other states.

WHEREAS, it is a legislative responsibility to review existing laws to ensure that they are modern, understandable, and efficient, and that they properly address the problems they are intended to rectify; and

WHEREAS, many changes have occurred in our society's perception of the proper duties, rights, and obligations of marital relationships; and

WHEREAS, the laws on ownership and division of marital property have in recent years undergone considerable change in this and other states; and

WHEREAS, the Forty-ninth Legislative Assembly considered, but did not adopt, Senate Bill No. 2180, the Uniform Marital Property Act, based in part on questions about the present state of marital property law in this state, and the effect that enactment of the Uniform Marital Property Act would have on ownership and division of marital property in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the present marital property law in this and other states, and the desirability of adopting the Uniform Marital Property Act considered, but not adopted, by the Forty-ninth Legislative Assembly; 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 Fiftieth Legislative Assembly.

Filed April 3, 1985

CHAPTER 792

HOUSE CONCURRENT RESOLUTION NO. 3101
(Committee on Appropriations)
(Approved by the Committee on Delayed Bills)

WORKMEN'S COMPENSATION BUREAU STRUCTURE STUDY

A concurrent resolution directing the Legislative Council to study alternative organizational and administrative structures for the Workmen's Compensation Bureau.

WHEREAS, to maintain the efficient and effective organization of state government the Legislative Assembly should review and coordinate continuously the functions of various state agencies; and

WHEREAS, the organizational and administrative structure of the Workmen's Compensation Bureau differs from that of most other state agencies; and

WHEREAS, a coordinated and cost efficient effort to deliver services may be better achieved through a reorganization of the Workmen's Compensation Bureau;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study alternative organizational and administrative structures for the Workmen's Compensation Bureau; 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 Fiftieth Legislative Assembly.

Filed April 4, 1985

CHAPTER 793

HOUSE CONCURRENT RESOLUTION NO. 3102
(J. Peterson, Martinson, Mertens, Rydell)
(Approved by the Committee on Delayed Bills)

NATIONAL GUARD ARMORY NAME

A concurrent resolution urging the National Guard to name the proposed new National Guard armory in Bismarck after Brigadier General Raymond J. Bohn.

WHEREAS, the Deputy Adjutant General of the State of North Dakota, Brigadier General Raymond J. Bohn died on Thursday, March 7, 1985, at the age of 55; and

WHEREAS, Brigadier General Raymond J. Bohn served this Nation and State as a member of the North Dakota Army National Guard since September 21, 1950, as State Director of the Selective Service System, as Deputy Adjutant General, and in other responsible positions; and

WHEREAS, Brigadier General Raymond J. Bohn was awarded the United States Legion of Merit and also the North Dakota Legion of Merit, along with other awards and recognitions, for his services; and

WHEREAS, Brigadier General Raymond J. Bohn was held in the highest esteem by the men and women of the Army National Guard with whom he served, and by the people of this state for whom he served; and

WHEREAS, through his many years of service Brigadier General Raymond J. Bohn made a significant and lasting contribution to the National Guard, to the state, and to his community; and

WHEREAS, the construction of a new National Guard armory in Bismarck has been proposed; and

WHEREAS, the naming of this new armory after Brigadier General Raymond J. Bohn would be an appropriate and lasting expression of gratitude for the service he gave to his state and to his country;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the National Guard to give lasting recognition to one of its distinguished officers by naming the proposed National Guard armory in Bismarck after Brigadier General Raymond J. Bohn; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the North Dakota Congressional Delegation, the National Guard Bureau of the United States, and the Adjutant General of the North Dakota National Guard.

Filed April 9, 1985

CHAPTER 794

HOUSE CONCURRENT RESOLUTION NO. 3104
(Kretschmar)

MUNICIPAL COURT SERVICES STUDY

A concurrent resolution directing the Legislative Council to study municipal court services.

WHEREAS, municipal courts provide important services to all citizens in North Dakota; and

WHEREAS, municipal judges and municipalities in North Dakota today face increased exposure to substantial future liabilities as a result of recent federal court cases; and

WHEREAS, legislative changes may be urgently needed to improve municipal court services and to reduce the risk of potential future liability;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the present structure of municipal court services; and

BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Council may consult with the Chief Justice and justices of the North Dakota Supreme Court, the judges of the trial courts, the State Court Administrator, the North Dakota League of Cities, and the State Bar Association of North Dakota, and that the study may be combined with other Legislative Council studies relating to the North Dakota judicial branch of government; 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 Fiftieth Legislative Assembly.

Filed April 9, 1985

CHAPTER 795

HOUSE CONCURRENT RESOLUTION NO. 3105
(Representatives Murphy, Goetz, Hughes, R. Anderson)
(Senators Bakewell, Adams)
(Approved by the Committee on Delayed Bills)

OIL AND GAS LAWS STUDY

A concurrent resolution directing the Legislative Council to study the oil and gas laws, with emphasis on those laws relating to royalty owners and surface owner protection.

WHEREAS, large areas of North Dakota are or may be subject to oil and gas exploration and development; and

WHEREAS, the development of these resources has resulted in the adoption of many statutes and administrative rules governing oil and gas activities; and

WHEREAS, existing statutes, rules, and practices are extremely complex and make it difficult for affected individuals to determine their rights and responsibilities; and

WHEREAS, the continued development of oil and gas resources in this state makes it imperative that the oil and gas laws be reviewed to assure that problems associated with oil and gas development are adequately addressed, that taxes are correctly reported and paid, that statutes and rules are clear and understandable, and that royalty owners' and surface owners' rights are clear and that they have access to production reports and other information necessary to determine their rights;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the oil and gas statutes, administrative rules, and practices in this state, with emphasis on making the statutes and rules clear and understandable and assuring that taxes are correctly reported and paid and that royalty owners and surface owners are adequately protected and have access to production reports and other information necessary to determine their rights; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to hold hearings in the oil development area and to include citizen members on the committee which conducts the study; and

BE IT FURTHER RESOLVED, that the Legislative Council seek the assistance and advice of the Attorney General, Tax Commissioner, State Auditor, Industrial Commission, Board of University and School Lands, and Public Service Commission in conducting this study; 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 Fiftieth Legislative Assembly.

Filed April 9, 1985

CHAPTER 796

HOUSE CONCURRENT RESOLUTION NO. 3106
(O. Hanson)
(Approved by the Committee on Delayed Bills)

NATIONAL SCHOOL LUNCH PROGRAM

A concurrent resolution urging the President of the United States and the Congress of the United States to maintain full funding for the National School Lunch Program.

WHEREAS, since its implementation in 1946, the basic and original purpose of the National School Lunch Program, to improve the nutritional status of children and to promote the utilization of agricultural products, appears to have been fulfilled; and

WHEREAS, the President's 1986 proposed budget would reduce National School Lunch Program aid to North Dakota schools by more than \$2,600,000 a year and would substantially reduce federal aid for other child nutrition programs; and

WHEREAS, it has been estimated by the American School Food Service Association that nationally between 8,000 and 10,000 schools serving 5,000,000 to 6,000,000 children will terminate school nutrition programs because of the proposed budget cuts in the National School Lunch Program; and

WHEREAS, the nutritional status of this country's youth is vital to their health and the future welfare of this state and the nation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the President of the United States and the Congress of the United States to maintain full funding for the National School Lunch 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 Health and Human Services, and to each member of the North Dakota Congressional Delegation.

Filed April 9, 1985

CHAPTER 797

HOUSE CONCURRENT RESOLUTION NO. 3107
(Representative Nalewaja)
(Senator Kilander)
(Approved by the Committee on Delayed Bills)

STATE CONSTRUCTION NEEDS STUDY

A concurrent resolution directing the Legislative Council to determine current state construction needs, develop a systematic approach for the planning and the establishment of priorities for future state construction projects, and to study alternative means to finance such projects.

WHEREAS, the Legislative Assembly is responsible for determining the need for proposed state capital construction projects; and

WHEREAS, because of the expense and importance of providing and maintaining adequate public facilities to meet the state's needs, and because the state's resources to meet those needs are limited, the Legislative Assembly must consider alternative methods of financing capital construction projects; and

WHEREAS, the state of North Dakota needs a long-range systematic plan for financing and constructing public facilities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to determine current state construction needs, develop a systematic approach for the planning and the establishment of priorities for state construction projects, and to study alternative means to finance such projects; 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 Fiftieth Legislative Assembly.

Filed April 9, 1985

HOUSE MEMORIAL RESOLUTIONS

CHAPTER 798

HOUSE MEMORIAL RESOLUTION NO. A
(Representatives Lloyd, Stofferahn)
(Senator Kelsh)

ROGER T. MELROE MEMORIALIZED

A memorial resolution extending sympathy and condolence to the family of Mr. Roger T. Melroe.

WHEREAS, God in His infinite wisdom has seen fit to summon from our midst Mr. Roger T. Melroe, who was the co-founder and executive vice president of the Melroe Manufacturing Company; and

WHEREAS, the Melroe Manufacturing Company founded in 1948 became a prominent innovator and manufacturer of various agricultural implements which are marketed on a worldwide basis; and

WHEREAS, the success of Mr. Melroe and his company greatly contributed to the entrepreneurial spirit of this state's citizenry and the growth of Gwinner, North Dakota, the home office of the Melroe Manufacturing Company; and

WHEREAS, Mr. Melroe served honorably in the 1957 Legislative Assembly representing the 13th legislative district;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That, we express our deep sorrow and extend to all members of Mr. Melroe's family our sincere sympathy and condolence in this their time of sorrow; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to Mrs. Roger T. Melroe.

Filed April 11, 1985

CHAPTER 799

HOUSE MEMORIAL RESOLUTION NO. B (Representative Skjerven)

LYDIA O. JACKSON MEMORIALIZED

A memorial resolution extending sympathy and condolence to the family of Mrs. Lydia O. Jackson.

WHEREAS, God in his infinite wisdom has seen fit to summon from our midst Mrs. Lydia O. Jackson, Poet Laureate of the State of North Dakota; and

WHEREAS, Mrs. Lydia O. Jackson rendered outstanding service to the people of this state through her artistic contributions; and

WHEREAS, Mrs. Lydia O. Jackson left a living legacy through her many poems, many of which have particular significance to North Dakotans;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That we express our deep sorrow and extend to all members of Mrs. Jackson's family our sincere sympathy and condolence in this their time of sorrow; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to the family of Mrs. Lydia O. Jackson.

Filed February 15, 1985

CHAPTER 800

HOUSE MEMORIAL RESOLUTION NO. C
(Committee on Memorial Resolutions)

DECEASED HOUSE MEMBERS MEMORIALIZED

A memorial resolution for deceased members of the House of Representatives of the State of North Dakota.

WHEREAS, God in His wisdom has seen fit to summon to eternal rest His servants and our former colleagues:

Bert A. Balerud, who served in the 34th through the 37th Legislative Assemblies, from the 29th District, died January 26, 1984.

John Bruner, Jr., who served in the 39th Legislative Assembly, from the 34th District, died January 18, 1984.

Harold O. Bullis, who served in the 40th and 41st Legislative Assemblies, from the 25th District, died November 17, 1983.

Leslie R. Burgum, who served in the 24th and 25th Legislative Assemblies, from the 23rd District, died August 15, 1984.

Earl E. Clarke, who served in the 24th Legislative Assembly, from the 24th District, died February 22, 1984.

Donnell Haugen, who served in the 27th through the 30th, and the 33rd Legislative Assemblies, from the 46th District, died September 7, 1983.

Arthur C. Johnson, who served in the 23rd, and the 25th through the 32nd Legislative Assemblies, from the 9th District, died June 5, 1983.

Richard H. Lynch, who served in the 32nd through the 35th, and the 37th Legislative Assemblies, from the 40th District, died June 1, 1983.

Henry O. Lundene, who served in the 38th and 39th, and the 41st through the 45th Legislative Assemblies, from the 16th District, died October 15, 1983.

Roger T. Melroe, who served in the 35th Legislative Assembly, from the 13th District, died January 2, 1985.

Fred Olafson, who served in the 39th Legislative Assembly, from the 11th District, died September 7, 1984.

Samuel Rudolf, Sr., who served in the 30th through the 33rd Legislative Assemblies, from the 36th District, died December 6, 1983.

John A. Unke, who served in the 38th Legislative Assembly from the 1st District, died January 17, 1985.

WHEREAS, today, we, as members of the House of Representatives of the 49th Legislative Assembly of the State of North Dakota, 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 contribution to their fellowmen and their communities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That we express our keen sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of these 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 House of Representatives and that duly enrolled copies of this resolution be presented by the Secretary of State to the surviving families of these deceased representatives.

Filed March 25, 1985

HOUSE CONCURRENT MEMORIAL RESOLUTIONS

CHAPTER 801

HOUSE CONCURRENT MEMORIAL RESOLUTION NO. 1
(Representatives Strinden, Mertens, R. Hausauer)
(Senators Nething, Heigaard)

FLORENCE SCHMIDT CLIFFORD MEMORIALIZED

A concurrent memorial resolution expressing the sympathy and condolences of the North Dakota Legislative Assembly to University of North Dakota President Thomas J. Clifford upon the death of his wife, Florence Schmidt Clifford.

WHEREAS, God in His infinite wisdom has summoned to His side the leading lady of the University of North Dakota, Florence Schmidt Clifford, the wife of the President of the University of North Dakota, Thomas J. Clifford; and

WHEREAS, Thomas J. Clifford is held in the highest esteem by the members of the Forty-ninth Legislative Assembly, who share with him his great sorrow in the loss of his wife who so nobly endured her illness while offering hope and assistance to others;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That we, the members of the Forty-ninth Legislative Assembly of the State of North Dakota, express our deepest sorrow and extend to Thomas J. Clifford and all members of his family our sincere sympathy and condolence in this their time of sorrow; and

BE IT FURTHER RESOLVED, that this resolution be entered in the journal and that the Secretary of State present an enrolled copy to Thomas J. Clifford and members of his family.

Filed December 6, 1984

CHAPTER 802

HOUSE CONCURRENT MEMORIAL RESOLUTION NO. 2
(Representatives Kloubec, Payne)
(Senator Kilander)

WILLIAM C. CORWIN MEMORIALIZED

A concurrent memorial resolution expressing the sympathy and condolences of the North Dakota Legislative Assembly to the family of William W. Corwin.

WHEREAS, God in His infinite wisdom has summoned to His side William W. Corwin; and

WHEREAS, William W. Corwin combined a successful business career with a lifetime of service to the State of North Dakota and its citizens through his interest in nurturing and preserving the water resources and water life of the state; and

WHEREAS, William W. Corwin in 1983 received the Governor's Award for Service to North Dakota for dedication and devotion to the development of water resources of North Dakota; and

WHEREAS, William W. Corwin's service to the state is held in the highest esteem by the members of the Forty-ninth Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That we, the members of the Forty-ninth Legislative Assembly of the State of North Dakota, express our deepest sorrow and extend to the family of William W. Corwin our sincere sympathy and condolence in this, their time of sorrow; and

BE IT FURTHER RESOLVED, that this resolution be entered in the journal and that the Secretary of State present an enrolled copy to Cora Corwin.

Filed February 1, 1985

CHAPTER 803

HOUSE CONCURRENT MEMORIAL RESOLUTION NO. 3
(Martinson, Belter, Lloyd, Gerntholz)
(Approved by the Committee on Delaved Bills)

**BRIGADIER GENERAL RAYMOND J. BOHN
MEMORIALIZED**

A concurrent memorial resolution expressing the sympathy and condolences of the North Dakota Legislative Assembly to the family of Brigadier General Raymond J. Bohn.

WHEREAS, God in His infinite wisdom has summoned to His side the Deputy Adjutant General of the State of North Dakota, Brigadier General Raymond J. Bohn; and

WHEREAS, Brigadier General Raymond J. Bohn served this Nation and State as a member of the North Dakota Army National Guard since September 21, 1950, as State Director of the Selective Service System, as Deputy Adjutant General, and in other responsible positions; and

WHEREAS, Brigadier General Raymond J. Bohn was awarded the United States Legion of Merit and also North Dakota Legion of Merit, along with other awards and recognitions, for his services; and

WHEREAS, Brigadier General Raymond J. Bohn was held in the highest esteem by the members of the Forty-ninth Legislative Assembly, who share with his family their great sorrow in the loss of this respectable man;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That we, the members of the Forty-ninth Legislative Assembly of the State of North Dakota, express our deepest sorrow and extend to all members of his family our sincere sympathy and condolence in this their time of sorrow; and

BE IT FURTHER RESOLVED, that this resolution be entered in the journal and that the Secretary of State present an enrolled copy to Mrs. Raymond Bohn and members of the family.

Filed March 14, 1985

SENATE CONCURRENT RESOLUTIONS

CHAPTER 804

SENATE CONCURRENT RESOLUTION NO. 4001
(Legislative Council)
(Interim Budget "B" Committee)

INVESTMENT BOARD-PUBLIC EMPLOYEES RETIREMENT SYSTEM FUNDS STUDY

A concurrent resolution directing the Legislative Council to study the investment powers and performance of the State Investment Board and funds of the Public Employees Retirement System.

WHEREAS, 1983 House Concurrent Resolution No. 3070 directed a Legislative Council study of the investment powers of the State Investment Board and the investment of funds of the Public Employees Retirement System; and

WHEREAS, the State Investment Board and the Public Employees Retirement System manage the investing of over \$500 million; and

WHEREAS, the state's investment goal is to realize maximum returns on investments with limited risks; and

WHEREAS, the Legislative Council's Budget "B" Committee completed its study on the investment powers of the State Investment Board and the Public Employees Retirement System and recommended improvements; and

WHEREAS, the Legislative Council should monitor the implementation of the recommended improvements; and

WHEREAS, the Budget "B" Committee recommends that the Legislative Council continue its study to determine what further improvements in the state's investment of funds can be made;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council conduct a study of the investment powers and performance of the State Investment Board and funds of the Public Employees Retirement System; 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 Fiftieth Legislative Assembly.

CHAPTER 805

SENATE CONCURRENT RESOLUTION NO. 4002
(Legislative Council)
(Interim Budget "C" Committee)

LONG-TERM CARE FACILITY MEDICAID REIMBURSEMENT

A concurrent resolution urging the Department of Human Services to revise its long-term care facility Medicaid reimbursement system.

WHEREAS, the Legislative Council's Budget "C" Committee during the 1983-84 interim conducted a study of the state's Medicaid reimbursement system for long-term care facilities; and

WHEREAS, the committee determined that the state's present Medicaid reimbursement system may shift some of the costs of long-term care applicable to Medicaid patients to those patients paying for their own care; and

WHEREAS, the committee determined that incentives should be included in the Medicaid reimbursement system to encourage improved levels of care, accomplish efficient management, contain costs, and reduce the differential between Medicaid and private pay patient rates; and

WHEREAS, the committee determined that a revision of the Medicaid reimbursement system with the proper incentives will assist in accomplishing these goals;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Department of Human Services to revise its long-term care facility Medicaid reimbursement system; and

BE IT FURTHER RESOLVED, that the Forty-ninth Legislative Assembly urges the Department of Human Services to:

1. Implement a uniform financial reporting system by January 1, 1985, to ensure that accurate comparisons among long-term care facilities can be made.

2. Design and develop before July 1, 1987, a revised prospective long-term care Medicaid reimbursement system that includes:
 - a. Rates based on budgets developed in accordance with Department of Human Services requirements calculated by using historical cost trends with appropriate adjustments for the type of long-term care facility, level of care delivered, and projected economic and other changes.
 - b. Long-term care facility budget requirements including defined allowable and unallowable costs.
 - c. An incentive formula rewarding high-cost facilities that reduce costs and low-cost facilities that maintain or lower their costs. Only facilities delivering prescribed standards of care should receive financial incentives. Financial disincentives should be provided for facilities that do not reduce excessive costs. The incentive formula should:
 - (1) Provide long-term care facilities with reasonable compensation for services rendered and an adequate return on investment for proprietary and nonprofit facilities.
 - (2) Place limitations on state reimbursement for excessive property costs and established dollar limitations on the required capitalization of acquired assets.
 - (3) Recognize necessary and justified new programs and other necessary changes within long-term care facilities that are included in a facility's proposed budget and affect the cost of future operations.
3. Secure reports from long-term care facilities delineating cost items and categories not reimbursed under the reimbursement formula but charged to private pay patients.
4. Have the revised prospective Medicaid reimbursement system operational on January 1, 1988.
5. Attempt to establish new Medicaid reimbursement rates before the beginning of each facility's fiscal year and no later than three months after that date.
6. Adjust the prospective reimbursement rates to a lower level only if the department determines that information provided by a long-term care facility has been materially or intentionally misstated; and

BE IT FURTHER RESOLVED, that the Department of Human Services report to the Legislative Council, or any committee the Legislative Council designates, during the 1985-86 interim on the department's progress in designing and developing the revised prospective Medicaid reimbursement system for long-term care facilities.

Filed April 5, 1985

CHAPTER 806

SENATE CONCURRENT RESOLUTION NO. 4003
(Legislative Council)
(Interim Budget "C" Committee)

LONG-TERM CARE FACILITY CODE OF ETHICS

A concurrent resolution urging long-term care facilities in this state to develop a long-term care facility code of ethics that includes guidelines to promote uniformity in the basis for charging for ancillary services and miscellaneous supplies.

WHEREAS, many residents of long-term care facilities have limited resources; and

WHEREAS, the factors long-term care facilities in North Dakota use to base their charges for ancillary services (services not necessarily required by or provided to all residents, including physical therapy) and miscellaneous supplies are not uniform; and

WHEREAS, some residents of long-term care facilities and their family members believe some of the charges for ancillary services and miscellaneous supplies are excessive and bear little relationship to the facilities' costs of providing the services or supplies; and

WHEREAS, these residents of long-term care facilities and their family members are frustrated by the amounts charged and the lack of information concerning the basis for the charges for these services and supplies; and

WHEREAS, because the basis used in pricing ancillary services and supplies are not uniform among facilities, residents and family members have difficulty comparing prices;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges long-term care facilities in North Dakota to develop a long-term care facility code of ethics that includes uniform methods of determining the basis for charging for ancillary services and miscellaneous supplies; and

BE IT FURTHER RESOLVED, that every long-term care facility provide a current copy of this code of ethics, and revisions to the code when the revisions occur, to residents of the facility; and

BE IT FURTHER RESOLVED, that the North Dakota Hospital Association and the North Dakota Health Care Association are urged to develop certification procedures that allow member facilities the opportunity to publicize their compliance with this code of ethics.

CHAPTER 807

SENATE CONCURRENT RESOLUTION NO. 4004 (Legislative Council) (Interim Education "A" Committee)

POSTSECONDARY SPECIAL EDUCATION PROGRAM

A concurrent resolution urging the United States Department of Education to approve the application for federal funds for a postsecondary special education program at the North Dakota State University-Bottineau Branch.

WHEREAS, the provision of special education services and programs has become an increasingly important consideration in the education of handicapped citizens; and

WHEREAS, appropriate opportunities for classroom and laboratory instruction, practical living skills, and actual work experience must be provided to handicapped persons to bring them toward the mainstream of economic and social life; and

WHEREAS, because approximately 70 percent of all North Dakota secondary school students attend a postsecondary educational institution to develop specialized employment skills and a large number of the remaining secondary school students engage in agricultural related employment, there exists a shortage and need for persons trained with other job skills for entry level positions of employment; and

WHEREAS, the North Dakota State University-Bottineau Branch and the Bottineau Peace Garden Special Education Cooperative have submitted a grant proposal to the United States Department of Education for federal funds to establish a two year college level program for high school graduates with learning disabilities to train them with entry level job skills leading to a two year associate's degree; and

WHEREAS, this program would be the first of its kind in the nation and could be demonstrated as a national model for the training of handicapped persons with needed job skills;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the United States Department of Education to approve the joint application submitted by the North Dakota State University-Bottineau Branch and the Bottineau Peace Garden Special Education Cooperative for federal funds to implement a program designed to train educable handicapped persons with marketable job skills in postsecondary educational institutions; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the United States Department of Education and to each member of the North Dakota Congressional Delegation.

CHAPTER 808

SENATE CONCURRENT RESOLUTION NO. 4006
(Legislative Council)
(Interim Government Reorganization Committee)

LABOR AND EMPLOYMENT SERVICES COORDINATION

A concurrent resolution directing the Department of Labor, the North Dakota Workmen's Compensation Bureau, and Job Service North Dakota to coordinate their efforts in providing labor and employment services to the people of North Dakota.

WHEREAS, separate reporting forms are required for employers reporting their payroll for unemployment compensation and workmen's compensation purposes; and

WHEREAS, the requirement for separate reporting forms is partially due to the variations in statutory reporting requirements between agencies; and

WHEREAS, the Department of Labor, Workmen's Compensation Bureau, and Job Service North Dakota each perform separate audits of employer payroll records for unemployment insurance contribution compliance, workmen's compensation contribution compliance, and wage and hour compliance; and

WHEREAS, Job Service North Dakota has 14 local offices located throughout the state which could possibly share office space with the Workmen's Compensation Bureau and the Department of Labor; and

WHEREAS, cost benefits may be realized by combining administrative and data processing services of the three agencies; and

WHEREAS, a coordinated and cost-efficient effort may be better achieved by combining the efforts of these agencies of government service;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly directs the Department of Labor, the North Dakota Workmen's Compensation Bureau, and Job Service North Dakota to coordinate their efforts in providing labor and employment services, with special emphasis given to: combining reporting forms and resolving variations in statutory reporting requirements; combining payroll auditing functions; sharing office space; and combining administrative and data processing services; and

BE IT FURTHER RESOLVED, that the Department of Labor, the North Dakota Workmen's Compensation Bureau, and Job Service North Dakota report on their progress in implementing these recommendations, and recommend any legislation necessary for implementation, to the Legislative Council, or any committee it designates, during the 1985-86 interim.

CHAPTER 809

SENATE CONCURRENT RESOLUTION NO. 4007
(Legislative Council)
(Interim Political Subdivisions "A" Committee)

REGIONAL AIRPORT AUTHORITIES SUPPORT — MINNESOTA

A concurrent resolution expressing support of the state of North Dakota for a regional airport authority serving the areas of Moorhead, Minnesota, and Fargo, North Dakota, and of East Grand Forks, Minnesota, and Grand Forks, North Dakota, and urging the Minnesota Legislature to enact legislation authorizing creation of regional airport authorities serving those two pairs of cities.

WHEREAS, the cities of Moorhead, Minnesota, and Fargo, North Dakota, and the outlying parts of Clay County, Minnesota, and Cass County, North Dakota, have a closely allied and interrelated market area and economy; and

WHEREAS, the cities of East Grand Forks, Minnesota, and Grand Forks, North Dakota, and the outlying parts of Polk County, Minnesota, and Grand Forks County, North Dakota, have a closely allied and interrelated market area and economy; and

WHEREAS, those areas are served by regional air carrier airports located in North Dakota, the airport in Fargo being known as Hector Field, and the airport in Grand Forks being known as Grand Forks Mark Andrews International Airport; and

WHEREAS, funds for the operation of these airports are provided in large part by tax levies within the city limits of Fargo for Hector Field and within the city limits of Grand Forks for Grand Forks Mark Andrews International Airport; and

WHEREAS, a substantial part of the use of these airports comes from residents of Minnesota who are thus not part of the property tax bases of Fargo or Grand Forks; and

WHEREAS, opportunities for acquiring necessary revenue to meet the operating expenses of these airports are limited when the property tax bases are limited to the cities in which the airports are located; and

WHEREAS, if regional airport authorities were established, revenue to finance the operations of these airports could be obtained from the entire area served by each airport, thus resulting in a higher overall quality of service provided at each airport; and

WHEREAS, responsible officials of Moorhead, Minnesota, and Clay County, Minnesota, have expressed an interest in establishing a regional airport authority having multistate jurisdiction; and

WHEREAS, in the opinion of the Attorney General of Minnesota, Clay County and the city of Moorhead "have no authority to participate in the creation or operation of a 'regional airport authority' as envisioned by North Dakota law";

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Minnesota Legislature to enact legislation that would authorize Clay County and the city of Moorhead as well as Polk County and the City of East Grand Forks to participate in the creation or operation of regional airport authorities serving their respective communities; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor of Minnesota, the leaders of the Minnesota Legislature, the members of the Minnesota Legislature representing Polk and Clay Counties, the commissioner of the Minnesota Department of Transportation, the executive and legislative officials of Clay County and Polk County, and the executive and legislative officials of the cities of Moorhead and East Grand Forks, Minnesota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the governors of South Dakota and Montana, and the leaders of the South Dakota and Montana Legislatures.

Filed March 26, 1985

CHAPTER 810

SENATE CONCURRENT RESOLUTION NO. 4008
(Legislative Council)
(Interim Political Subdivisions "A" Committee)

REGIONAL AIRPORT AUTHORITIES SUPPORT — SOUTH DAKOTA

A concurrent resolution expressing support of the state of North Dakota for establishing regional airport authorities serving the areas along the border between North Dakota and South Dakota, and urging the South Dakota Legislature to enact legislation authorizing creation of regional airport authorities serving border cities.

WHEREAS, many cities along the border between North Dakota and South Dakota have a closely allied and interrelated market area and economy; and

WHEREAS, in many cases the area is served by an airport located in one state but serving both states; and

WHEREAS, funds for the operation of these airports are provided in large part by property tax levies within the applicable city limits for a local municipal airport authority; and

WHEREAS, a substantial part of the use of these border airports comes from residents of the other state who are thus not part of the property tax base helping to finance the airport; and

WHEREAS, opportunities for acquiring necessary revenue to meet the operating expenses of these border airports are limited when the property tax base is limited to the city in which the border airport is located; and

WHEREAS, if a regional airport authority were established, revenue to finance the operations of these border airports could be obtained from the entire area served by the airport, thus resulting in a higher overall quality of service provided at the airport;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the South Dakota Legislature to enact legislation that would authorize participation in and operation of regional airport authorities serving both North Dakota and South Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor of South Dakota, the leaders of the South Dakota Legislature, and the director of the South Dakota Division of Aeronautics; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the governors of Minnesota and Montana, and the leaders of the Minnesota and Montana Legislatures.

Filed March 26, 1985

CHAPTER 811

SENATE CONCURRENT RESOLUTION NO. 4009
(Legislative Council)
(Interim Political Subdivisions "A" Committee)REGIONAL AIRPORT AUTHORITIES SUPPORT —
MONTANA

A concurrent resolution expressing support of the state of North Dakota for establishing regional airport authorities serving the areas along the border between North Dakota and Montana, and urging the Montana Legislature to enact legislation authorizing creation of regional airport authorities serving border cities.

WHEREAS, many cities along the border between North Dakota and Montana have a closely allied and interrelated market area and economy; and

WHEREAS, in many cases the area is served by an airport located in one state but serving both states; and

WHEREAS, funds for the operation of these airports are provided in large part by property tax levies within the applicable city limits for a local municipal airport authority; and

WHEREAS, a substantial part of the use of these border airports comes from residents of the other state who are thus not part of the property tax base helping to finance the airport; and

WHEREAS, opportunities for acquiring necessary revenue to meet the operating expenses of these border airports are limited when the property tax base is limited to the city in which the border airport is located; and

WHEREAS, if a regional airport authority were established, revenue to finance the operations of these border airports could be obtained from the entire area served by the airport, thus resulting in a higher overall quality of service provided at the airport;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Montana Legislature to enact legislation that would authorize participation in and operation of regional airport authorities serving across state lines; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor of Montana, the leaders of the Montana Legislature, and the administrator of the Montana Division of Aeronautics; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the governors of Minnesota and South Dakota and the leaders of the Minnesota and South Dakota Legislatures.

Filed March 26, 1985

CHAPTER 812

SENATE CONCURRENT RESOLUTION NO. 4010
(Legislative Council)
(Interim Water Committee)

GARRISON DIVERSION UNIT PRIORITY

A concurrent resolution designating the construction and completion of the federally authorized and funded Garrison Diversion Unit as having the first and highest priority for water development in North Dakota.

WHEREAS, North Dakota has provided 550,000 acres of valuable river bottom lands for the construction of Missouri River reservoirs under the federal Flood Control Act of 1944, causing an annual loss of one hundred thirty-one million dollars in economic gross product and an additional annual loss of forty-five million dollars in personal income; and

WHEREAS, North Dakota was assured by Congress in the Flood Control Act of 1944 that the loss of this valuable farmland would be offset by benefits from the Garrison Diversion Unit; and

WHEREAS, the Garrison Diversion Unit promises to enhance the agricultural productivity of the state, assure adequate and needed supplies of Missouri River water for urban and rural water systems, create recreational opportunities, and provide fish and wildlife enhancement; and

WHEREAS, North Dakota is presently receiving only one percent of the benefits promised by the federal government in return for its sacrifice of valuable farmland; and

WHEREAS, the construction of the Garrison Diversion Unit by the federal government has been delayed numerous times with the construction costs rising with each delay; and

WHEREAS, the Garrison Diversion Unit Commission was established by Public Law 98-360 "to review the contemporary water development needs of the State of North Dakota and propose modifications to the Garrison Diversion Unit consistent with the existing authorization"; and

WHEREAS, after three hearings in four months, the Commission submitted to the Secretary of the Interior a final report which

recommends, among other things, that the Sykeston Canal be built instead of Lonetree Reservoir, that Lonetree Reservoir remain an authorized feature of the Project but that construction be deferred "pending a determination of need by the Secretary [of Interior] and satisfactory conclusion of consultations with Canada", that Taayer Reservoir not be constructed, that 130,000 acres of land be irrigated in the Missouri River Basin, including 17,000 on Indian reservations in North Dakota, that water be released into the Sheyenne River through adequate treatment works for municipal and industrial water for cities along the Sheyenne and Red Rivers, that four hundred million dollars be spent for municipal and industrial pipeline systems in North Dakota, and that mitigation for project implementation losses be accomplished on an acre-for-acre basis, based on ecological equivalency; and

WHEREAS, the Garrison Diversion Unit Commission did not accept the policy statement (HCR 3012) adopted by the Legislative Assembly in special session on December 6, 1984; and

WHEREAS, the Commission did conclude that North Dakota deserved a federally funded water development project as a result of lands being lost to Pick-Sloan reservoirs; and

WHEREAS, the Commission recommendations would render extremely remote the ability of the Garrison Diversion Unit to deliver water to the Souris River and Devils Lake Basins, and additional water for future uses to the Sheyenne River and James River Basins; and

WHEREAS, the Commission recommendations would preclude any benefits from the Garrison Diversion Unit to the State of South Dakota; and

WHEREAS, the primary objective of North Dakota concerning the Garrison Diversion Unit is to divert Missouri River water eastward into the Sheyenne, Red, James, and Souris Rivers, and Devils Lake, to provide a long-term water supply for future generations for multiple uses, including irrigation, municipal, rural, industrial, recreation, wildlife, and other water uses;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the construction and completion of the federally funded Garrison Diversion Unit has the first and highest priority for water development in the State of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Assembly concurs with the final recommendation of the Garrison Diversion Unit Commission "that the Secretary of the Interior proceed immediately to construct those portions of the Commission Plan that are a part of the 1965 authorized Initial Phase", and urges Congress to

appropriate necessary funds for continued construction of such portions of the project for fiscal year 1986; and

BE IT FURTHER RESOLVED, that the Legislative Assembly urges the Secretary of the Interior to determine the economic feasibility and engineering soundness of the Sykeston Canal, and the capability of the Sykeston Canal to deliver water to the Souris River Basin, the Devils Lake Basin, and the State of South Dakota, and that such findings be presented to the Governor and North Dakota Congressional Delegation before any construction of the Sykeston Canal is initiated; and

BE IT FURTHER RESOLVED, that the Legislative Assembly also urges the Secretary of the Interior to enter into an agreement with North Dakota for wildlife management of lands acquired for the Lonetree Reservoir, in a manner that does not preclude future use of such lands as a reservoir; and

BE IT FURTHER RESOLVED, that the Legislative Assembly also urges the Secretary of the Interior and the State Department to resume immediately diplomatic consultations with Canada on all issues concerning the portions of the Garrison Diversion Unit within the Hudson Bay Basin; and

BE IT FURTHER RESOLVED, that the Legislative Assembly urges the Secretary of the Interior to redesignate the principal supply works and the James River Basin features of the Garrison Diversion Unit as the Dakota Unit, Pick-Sloan Missouri Basin Program; 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 and to the United States Secretary of the Interior.

Filed April 9, 1985

CHAPTER 813

SENATE CONCURRENT RESOLUTION NO. 4011
(Olson)

BURLEIGH COUNTY FAIRGROUND LAND GRANT

A concurrent resolution urging the Board of University and School Lands to grant title to or an easement in land located east of Bismarck for the purposes of a county fairground for Burleigh County.

WHEREAS, the Board of University and School Lands has the power to appraise, sell, rent, and dispose of land held by it, subject to Article IX of the Constitution of North Dakota and any law that may be passed by the Legislative Assembly; and

WHEREAS, the Board of University and School Lands holds in trust land located east of Bismarck, specifically the southwest quarter of section thirty-six, township one hundred thirty-nine north, range eighty west of the fifth principal meridian, Burleigh County, North Dakota; and

WHEREAS, this land is subject to utility easements and other restrictions limiting the use of the land; and

WHEREAS, this land is not being put to its most beneficial use as grazing land; and

WHEREAS, Burleigh County is in need of a tract of land for fairground purposes; and

WHEREAS, this land would be suitable for use as a fairground;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Board of University and School Lands to work with the Board of County Commissioners of Burleigh County to grant Burleigh County title to or an easement in 40 or more acres of the land described above for fairground purposes, within the limits of applicable constitutional constraints; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to each member of the Board of University and School Lands, the Commissioner of University and School Lands, and each member of the Board of County Commissioners of Burleigh County.

CHAPTER 814

SENATE CONCURRENT RESOLUTION NO. 4012
(Lashkowitz)ROGER MARIS BASEBALL HALL OF FAME
INDUCTION URGED

A concurrent resolution commending Roger Maris on his major league baseball career and urging the Baseball Writers Association of America to elect Roger Maris to the Baseball Hall of Fame.

WHEREAS, it is a custom of the Legislative Assembly to recognize and honor North Dakota citizens for their national accomplishments; and

WHEREAS, Roger Maris was the recipient of the Theodore Roosevelt Rough Rider Award in 1963, which is the highest recognition the state of North Dakota can bestow upon present or former North Dakotans; and

WHEREAS, Roger Maris went from a career as an outstanding athlete in several competitive sports at Fargo Shanley High School to play professional baseball in Fargo and then on to play for four major league baseball teams in both major leagues in a distinguished 12-year major league career; and

WHEREAS, Roger Maris hit 275 career home runs and drove in 851 runs in major league regular season play and played a key role in the success of seven world series teams and three world champion teams, and is one of only five players to hit a world series home run for a team from each league; and

WHEREAS, Roger Maris captured the attention and imagination of America as few in the sports world have, when his outstanding season challenged baseball's most cherished record held by a larger-than-life American hero, the immortal and beloved Babe Ruth, and Roger Maris accomplished the unparalleled feat of hitting 61 home runs against 46 different pitchers during the 1961 season, a feat made more remarkable by the unceasing pressure exerted upon him by the press and public attention; and

WHEREAS, Roger Maris was a fleet outfielder, renowned equally for his skill with a glove as for his prowess as an outstanding hitter, and displayed remarkable abilities on defense for which he received a Gold Glove award; and

WHEREAS, Roger Maris was selected as the most valuable player in the American League in consecutive seasons, 1960 and 1961, and is one of only nine players in the history of major league baseball to be so honored; and

WHEREAS, Roger Maris has given unsparingly of himself to causes for the assistance of deprived, handicapped, and underprivileged children and adults and served with Shirley Temple Black as cochairman of the national campaign for the Multiple Sclerosis Society in 1962;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly takes great pleasure in extending its congratulations to Roger Maris for his outstanding accomplishments both in and out of major league baseball and respectfully urges the Baseball Writers Association of America to elect Roger Maris to the Baseball Hall of Fame as a well-deserved tribute to his outstanding major league career and his inspiration to youths through his exemplary conduct on and off the baseball diamond; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to Roger Maris and his parents, to the president of the Baseball Writers Association of America, to the editor of the Sporting News, to the wire services, and to the sports editor of each radio and television station and daily newspaper in the state.

Filed March 6, 1985

CHAPTER 815

SENATE CONCURRENT RESOLUTION NO. 4013 (Ingstad)

ENERGY SAVING CONSTRUCTION STUDY

A concurrent resolution directing the Legislative Council to study methods to encourage the use of modern energy saving construction techniques including use of super insulation and the feasibility and desirability of requiring use of such techniques in future construction.

WHEREAS, North Dakota's climate places a premium on the efficient use of nonrenewable resources for heating and cooling buildings; and

WHEREAS, energy from nonrenewable resources is wasted by inefficient construction techniques which minimize a building's ability to retain heat during cold seasons or repel heat during warm seasons; and

WHEREAS, modern construction techniques, including use of super insulation, allow buildings to make much more efficient use of energy for heating or cooling, thereby reducing waste of precious resources used to produce energy; and

WHEREAS, it is in the best interest of present and future generations of North Dakotans to make the most efficient use of nonrenewable resources;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is directed to study methods to encourage use of efficient building techniques, including use of super insulation, with particular emphasis on tax incentives to encourage use of efficient construction techniques, and to study the feasibility and desirability of requiring use of efficient construction techniques including super insulation on buildings in the future; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 816

SENATE CONCURRENT RESOLUTION NO. 4015
(Holmberg)

VIKING ELEMENTARY SCHOOL CONGRATULATED

A concurrent resolution congratulating the Viking Elementary School Principal Wayne Peterson; the students, faculty, staff, and parents at Viking Elementary School; Grand Forks Public Schools Superintendent Dr. Mark Sanford; and the staff of the Center for Aerospace Sciences at the University of North Dakota for their outstanding performance and successful participation in the national Young Astronauts' Program.

WHEREAS, the national Young Astronauts' Program is designed to stimulate young Americans in grades one through nine using the excitement of the space program to improve their competency in math, science, and technology so they may actively participate in, contribute to, and profit from the society of the future; and

WHEREAS, Viking Elementary School at Grand Forks, North Dakota, was the first of nine schools in the entire country selected by the White House staff to be a pilot school using a math, science, and technology curriculum developed by the National Space Institute along with the National Aeronautics Space Administration; and

WHEREAS, ten Viking Elementary School students were personally congratulated by United States President Ronald Reagan, and the entire student body and staff of Viking Elementary School will be recognized for their national achievement on January 10, 1985, by Astronauts Col. "Buzz" Aldrin and Dr. Anna Fisher; and

WHEREAS, the Center for Aerospace Sciences at the University of North Dakota is the sponsor of the Viking Elementary School Young Astronauts' Chapter;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly of the State of North Dakota extends its very sincere congratulations to the Viking Elementary School Principal Wayne Peterson; the students, faculty, staff, and parents at Viking Elementary School; the Grand Forks Public Schools Superintendent Dr. Mark Sanford; and the staff at the Center for Aerospace Sciences at the University of North Dakota for their outstanding performance and successful participation in the national Young Astronauts' Program; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the superintendent of Grand Forks Public Schools, the Viking Elementary School principal, and the director of the Center for Aerospace Sciences at the University of North Dakota.

Filed January 10, 1985

CHAPTER 817

SENATE CONCURRENT RESOLUTION NO. 4016
(Senators Nething, Heigaard)
(Representatives Strinden, Mertens, R. Hausauer)

ATTENDANCE AT PRESIDENTIAL INAUGURATION

A concurrent resolution authorizing the Speaker of the House and the majority and minority Senate and House leaders, or their designees, to attend the presidential inauguration, excusing their absence, and authorizing expenditure of moneys from the legislative appropriation necessary to cover their expenses.

WHEREAS, the inauguration of Ronald Reagan as the President of the United States will be on January 20; and

WHEREAS, the presidential inauguration symbolizes democracy in action and freedom in the selection of our nation's leaders; and

WHEREAS, harmonious relationships between the three coequal branches of government on the state and federal levels are vital to the success of our democratic society; and

WHEREAS, important decisions that may greatly alter the future course of events in North Dakota will be made by the President and the executive branch in the next four years; and

WHEREAS, the spirit of goodwill and cooperation between the various branches of state and federal government can be demonstrated by legislative representation at the presidential inauguration during this important period in North Dakota history;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Speaker of the House and the majority and minority leaders of the House and the Senate, or their designees, are authorized to attend the presidential inauguration in Washington, D.C., on January 20; and

BE IT FURTHER RESOLVED, that the Senate and the House excuse the absence of those members attending the inauguration and authorize the expenditure of such sums as are reasonably necessary from the legislative appropriation to cover their expenses incurred as a result of such attendance.

Filed January 17, 1985

CHAPTER 818

SENATE CONCURRENT RESOLUTION NO. 4017
(Senators Tallackson, Vosper, Wogsland)
(Representatives Vander Vorst, Stofferahn)

BUSINESS RECORDS REQUIREMENTS

A concurrent resolution urging Congress and the Internal Revenue Service to remove the restrictions of the Tax Reform Act of 1984 upon farmers and small businessmen which require adequate contemporaneous records to substantiate the business purpose of travel deductions.

WHEREAS, Congress passed the Tax Reform Act of 1984 [Pub. L. 98-369] which provides by amendment of 26 U.S.C. 274(d) that a taxpayer must substantiate by adequate contemporaneous records the amount, time, place, and business purpose of travel expenses to enable a taxpayer to validly claim and substantiate the business use deduction for the use of listed property; and

WHEREAS, failure to adequately substantiate business use of motor vehicles prevents taxpayers from using accelerated cost recovery system depreciation or investment tax credits for the property; and

WHEREAS, these new requirements place a heavy recordkeeping requirement on taxpayers, particularly burdensome to farmers and small businessmen who cannot afford to purchase motor vehicles to be used solely for business purposes and who must combine business and personal use; and

WHEREAS, farmers and small businessmen are required by the new regulations to record every use of a motor vehicle to substantiate business use which may take more time to record than the time spent in the actual use of a motor vehicle, and the recordkeeping requirements unduly interfere with the daily activity of such persons;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States and the Internal Revenue Service to remove the restrictions placed upon farmers and small businessmen by imposition of the adequate contemporaneous records requirement contained in 26 U.S.C. 274(d); and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the commissioner of the Internal Revenue Service; the chairmen of the House Committee on Ways and Means, the Senate Committee on Finance, the joint House and Senate Committee on Taxation; and each member of the North Dakota Congressional Delegation.

Filed March 26, 1985

CHAPTER 819

SENATE CONCURRENT RESOLUTION NO. 4019
(Senators Nething, Heigaard)
(Representatives Strinden, Mertens)

LEGISLATIVE FITNESS DAY

A concurrent resolution recognizing the need for public awareness of the importance of physical fitness, designating the fourth day of March, 1985, as "Legislative Fitness Day", and urging all appropriate state agencies to promote public awareness of the importance of physical fitness.

WHEREAS, the health and future welfare of the citizens of this state are inextricably entwined; and

WHEREAS, it is each individual's own responsibility to contribute to that person's own health and physical welfare; and

WHEREAS, to heighten our awareness of the importance of physical fitness the North Dakota Association for Health, Physical Education, Recreation and Dance has volunteered to perform a variety of health care screening and assessment services for members of the Legislative Assembly and their employees; and

WHEREAS, a day of physical fitness recognized as such by the Legislative Assembly will serve to promote the public's awareness of the importance of good health care practices;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the fourth day of March, 1985, be designated as "Legislative Fitness Day"; and

BE IT FURTHER RESOLVED, that all appropriate state agencies are encouraged to promote public awareness of the importance of physical fitness and good health care practices.

Filed March 21, 1985

CHAPTER 820

SENATE CONCURRENT RESOLUTION NO. 4024 (Krauter, Kelsch, Bakewell)

FARM CRISIS SOLUTION EFFORTS

A concurrent resolution urging the President of the United States, the Secretary of Agriculture, and the members of the North Dakota Congressional Delegation to make a united effort to bring the farm credit crisis, the need for full agricultural parity, and the need for a balanced federal budget to the attention of elected officials.

WHEREAS, agriculture is the greatest producing industry in the country; and

WHEREAS, agriculture is the only industry operating under the free market system where the price received by producers is determined by nonproducers; and

WHEREAS, the prices received by agricultural producers do not provide the same purchasing power as in the past; and

WHEREAS, many agricultural producers are currently suffering due to a farm credit crisis; and

WHEREAS, many agricultural producers find it necessary to attempt to borrow money for operating expenses, and machinery and land purchases; and

WHEREAS, high interest rates severely impact the availability and desirability of agricultural loans; and

WHEREAS, decreasing land values have eroded the net worth of agricultural producers; and

WHEREAS, deficit governmental spending, high interest rates, and a poor farm economy adversely affect all segments of the economy; and

WHEREAS, Women Involved in Farm Economics (W.I.F.E.) has made a united effort to bring the farm credit crisis, the need for full agricultural parity, and the need for a balanced federal budget to the attention of elected officials;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the President of the United States, the Secretary of Agriculture, and the members of the North Dakota Congressional Delegation to make a united effort in calling to the attention of elected officials the farm credit crisis, the need for full agricultural parity, and the need for a balanced federal budget; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the organization of Women Involved in Farm Economics (W.I.F.E.), the President of the United States, the Secretary of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 1985

CHAPTER 821

SENATE CONCURRENT RESOLUTION NO. 4026
(Senators Stromme, Thane)
(Representative Kingsbury)

SEVERANCE AND PROPERTY TAX STUDY

A concurrent resolution directing the Legislative Council to study the equity of the rate of and exemptions from the coal severance tax, the equity of the farm residence property tax exemption, and recent changes in classification and assessment of real property for purposes of ad valorem taxation and the effects of these changes upon mill levy limitations imposed by law on political subdivisions.

WHEREAS, the rate of the coal severance tax and existing and alternative exemptions from the coal severance tax should be studied with regard to the competitive position of the North Dakota coal industry and the industries which utilize North Dakota coal; and

WHEREAS, the 1981 Legislative Assembly provided for statutory classification of real property for property tax purposes; and

WHEREAS, the equity of the farm residence exemption should be reexamined in light of the difficulty of applying the exemption and recent changes in the assessment of agricultural property; and

WHEREAS, the statutory classification of real property drastically restructured property assessments in the state; and

WHEREAS, at the time of enactment of statutory classification of real property, it was not known what the resulting effects would be on the tax bases of political subdivisions which were limited by law to maximum mill levies; and

WHEREAS, it was necessary to ensure that tax bases did not fluctuate with drastic consequences across the state due to changed valuations, and 1981 legislation provided protection for taxing districts and taxpayers by providing that each taxing district could levy the same amount in dollars as that taxing district levied the prior year plus an additional percentage increase; and

WHEREAS, the protection for taxing districts and taxpayers provided by levy limitation in dollars was intended to be temporary and was continued by legislation passed by the 1983 Legislative

Assembly and may be continued by legislation pending before the 1985 Legislative Assembly; and

WHEREAS, detailed study is required to determine whether it is desirable to retain, revise, or eliminate mill levy limitations for political subdivisions;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the equity of the rate of and exemptions from the coal severance tax; the changes in political subdivision tax bases due to recent changes in valuation, classification, and assessment of real property, with particular emphasis on the determination of an appropriate means of limiting political subdivision mill levies or on whether it is feasible to eliminate mill levy limitations; and the equity of the farm residence exemption from property taxes in light of the difficulty of applying the exemption and recent changes in the assessment of agricultural property; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 822

SENATE CONCURRENT RESOLUTION NO. 4027
(Senators J. Meyer, Matchie, Wenstrom)
(Representatives Retzer, Hill, D. Olsen)

LONG-TERM CARE INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the availability and coverage of long-term care insurance.

WHEREAS, life expectancy has increased; and

WHEREAS, the need for both home and institutional services increases with age; and

WHEREAS, the Medicaid Program is proposing to spend one hundred seven million five hundred thousand dollars in the coming biennium for long-term care services, which is an increasing public burden; and

WHEREAS, the Medicare Program is a limited resource; and

WHEREAS, the development of private insurance underwriting long-term care services would benefit consumers, providers, and government; and

WHEREAS, spouses are often denied insurance benefits;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the availability, coverage, and provision of health care insurance plans that would include long-term insurance and that in the absence of reasonable coverage, that recommendations be given which would make available such coverage; and

BE IT FURTHER RESOLVED, that the insurance department, insurance industry, the long-term care industry, and senior citizens' groups assist 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 Fiftieth Legislative Assembly.

Filed March 27, 1985

CHAPTER 823

SENATE CONCURRENT RESOLUTION NO. 4029

(Senator Naaden)
 (Representative Martinson)
 (Employment Committees)

LEGISLATIVE EMPLOYEES DESIGNATION AND COMPENSATION

A concurrent resolution providing and designating Senate and House employees and fixing their compensation.

BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA,
 THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That for and during the Forty-ninth Legislative Assembly the following named persons are employed and appointed as employees of the Senate and House and shall be paid the daily wages opposite their respective names in accordance with their positions as shown below:

SENATE

Leo Leidholm, Secretary of the Senate	\$85.00
Doris McMahon, Desk Reporter	79.00
Olger Sandven, Sergeant-at-Arms	64.00
J. Vernon Asheim, Assistant Secretary of the Senate	70.00
Sandra Boehler, Bill Clerk	64.00
Erma Hauglie, Chief Stenographer & Payroll Clerk	64.00
Jan Burgad, Appropriations Committee Clerk	66.00
Nancy Hayes, Assistant Appropriations Committee Clerk	62.00
Carol Nitschke, Chief Committee Clerk	64.00
Pearl Berget, Committee Clerk	58.00
Jan Mumma, Committee Clerk	58.00
Alice Zako, Committee Clerk	58.00
Barb Klein, Committee Clerk	58.00
Naomi Faul, Committee Clerk	58.00
George Berg, Committee Clerk	58.00
Gloria Johner, Committee Clerk	58.00
Connie Koenig, Committee Clerk	58.00
Esther Beazley, Committee Clerk	58.00
Lori Oswald, Assistant Committee Clerk	55.00
Diane Larson, Chief Page & Bill Book Clerk	55.00
Kevin Cramer, Desk Page	48.00
Jacqueline Schmidt, Journal Page	48.00
Lois J. Scherr, Secretary to Majority Leader	70.00

Sharon Lang, Assistant to Secretary of Majority Leader	64.00
Dee Hanson, Secretary to Minority Leader	70.00
Sandi Kershaw, Assistant to Secretary of Minority Leader	64.00
David Larson, Deputy Sergeant-at-Arms	52.00
Jack Evans, Assistant Sergeant-at-Arms	48.00
Robert Muhs, Assistant Sergeant-at-Arms	48.00
Marshall Gooch, Assistant Sergeant-at-Arms	48.00
Gary Hendrickson, Assistant Sergeant-at-Arms	48.00
Eugene Grenz, Chief Bill & Journal Room Clerk	58.00
LeDores Robey, Bill Room Clerk	48.00
Melvena McLeish, Bill Room Clerk	48.00
Selma Carlson, Bill Room Clerk	48.00
Faye Caya, Bill Room Clerk	48.00
Fred Schulz, Journal Room Clerk	48.00
Nettie Monroe, Journal Room Clerk	48.00
Carrie Hanson, Stenographer	52.00
Sharon Neukircher, Stenographer	52.00
Sue Alexander, Stenographer	52.00
Marge Mosbrucker, Stenographer	52.00
Esther Davis, Information Desk Attendant	48.00
Pamela Davy, Telephone Page	48.00
Thelma Harvey, Telephone Attendant	48.00
Margo Undlin, Telephone Attendant	48.00
Renee Bullinger, Telephone Attendant	48.00
Jim Inman, Parking Lot Attendant	48.00
Kelly Kramer, Page	48.00
Steven Karel, Page	48.00
Reed Boelter, Page	48.00
Jeri Kurle, Page	48.00
Wanda Scheid, Page	48.00
Gary Emineth, Bill Book Clerk	48.00
Mark Wolf, Bill Book Clerk	48.00
Lucy Miller, Bill Book Clerk	48.00
Dick Lang, Janitor (partial pay only)	34.00
Lucas Giesinger, Janitor (partial pay only)	46.00
Kevin Erhardt, Janitor (partial pay only)	28.00

HOUSE

Roy Gilbreath, Chief Clerk	\$85.00
Barbara Middaugh, Desk Reporter	79.00
David Hillesland, Sergeant-at-Arms	64.00
Skip Sjothun, Assistant Chief Clerk	70.00
Jeane Marschke, Bill Clerk	64.00
Sue Mollison, Chief Stenographer & Payroll Clerk	64.00
Judy Frink, Chief Committee Clerk	64.00
Betty Johnson, Appropriations Committee Clerk	66.00
Jamie Marler, Assistant Appropriations Committee Clerk	62.00
Joan Nelson, Assistant Appropriations Committee Clerk	62.00
Cindy Nelson, Assistant Appropriations Committee Clerk	62.00
Helen Soma, Committee Clerk	58.00
Beverly Diebert, Committee Clerk	58.00
Sonia Vculek, Committee Clerk	58.00
Kim Fricke, Committee Clerk	58.00

Connie Johnsen, Committee Clerk	58.00
Darlyne Clausnitzer, Committee Clerk	58.00
Cheryl Wescott, Committee Clerk	58.00
Peggy Larson, Committee Clerk	58.00
Judy Hoffman, Committee Clerk	58.00
Janice Stein, Committee Clerk	58.00
Maude Grambs, Assistant Committee Clerk	55.00
Tove Mandigo, Chief Page & Bill Book Clerk	55.00
Pam Wheeler, Journal Page	48.00
Barbara Larson, Desk Page	48.00
Leslie Randich, Desk Page	48.00
Lane Landenberger, Desk Page	48.00
Dottie Neils, Secretary to the Speaker	64.00
Mazie Patchen, Secretary to the Majority Leader	70.00
Brenda Blazer, Assistant to Secretary of Majority Leader	64.00
Jan Franklund, Secretary to Minority Leader	70.00
Lorrie Pavlicek-Allison, Assistant to Secretary of Minority Leader	64.00
Daniel O'Neil, Deputy Sergeant-at-Arms	52.00
Harold Unterscher, Assistant Sergeant-at-Arms	48.00
Edgar Beyers, Assistant Sergeant-at-Arms	48.00
Jeff Heider, Assistant Sergeant-at-Arms	48.00
Renae Doan, Assistant Sergeant-at-Arms	48.00
Bill Harter, Assistant Sergeant-at-Arms	48.00
Ed Leno, Assistant Sergeant-at-Arms	48.00
Mark Zimmerman, Assistant Sergeant-at-Arms	48.00
Peggy Ormseth, Information Desk Attendant	48.00
Eli Nemer, Bill Room Clerk	48.00
Fred Banker, Bill Room Clerk	48.00
John Scherf, Bill Room Clerk	48.00
Mary J. Vonasek, Bill Room Clerk	48.00
Neal Schlosser, Bill Room Clerk	48.00
Eugene Oster, Journal Room Clerk	48.00
David Hetland, Jr., Journal Room Clerk	48.00
Flo Feland, Chief Telephone Attendant	52.00
Judy Koch, Telephone Page	48.00
Marilyn Bekkerus, Telephone Attendant	48.00
Barb Gregor, Telephone Attendant	48.00
Shirley Borg, Telephone Attendant	48.00
Gene Larson, Parking Lot Attendant	48.00
Phyllis Johnson, Stenographer	52.00
Jeanne Karhoff, Stenographer	52.00
Donna LaFave, Stenographer	52.00
Bertha Palen, Stenographer	52.00
Vivian Johnson, Stenographer	52.00
Gloriann Fagerland, Typist	52.00
Mary Ziniel, Typist	52.00
Brian Neuhardt, Page and Bill Book Clerk	48.00
Cheri Running, Page and Bill Book Clerk	48.00
David Hougen, Page and Bill Book Clerk	48.00
Judy Koester, Page and Bill Book Clerk	48.00
Richard Stenberg, Page and Bill Book Clerk	48.00
Mary Boardman, Page and Bill Book Clerk	48.00
Theresa Steier, Page and Bill Book Clerk	48.00

Robert Hylden, Page and Bill Book Clerk	48.00
Tony Gross, Page and Bill Book Clerk	48.00
Adele Leingang, Page and Bill Book Clerk	48.00
Donna Thomas, Page and Bill Book Clerk	48.00
Sandi Hohbein, Page and Bill Book Clerk	48.00
Tonja Turitto, Page and Bill Book Clerk	48.00
Charlotte Lang, Page and Bill Book Clerk	48.00
Judy Tinjum, Page and Bill Book Clerk	48.00
Brooke Lilly, Page and Bill Book Clerk	48.00
Joe Emineth, Janitor (partial pay only)	38.00
Francis Scharosch, Janitor (partial pay only)	33.00
Eugene Reynolds, Janitor (partial pay only)	46.00
Elmer C. Schweigert, Janitor (partial pay only)	38.00

BE IT FURTHER RESOLVED, that in the event any employee resigns, is discharged, or for any other reason terminates employment, the compensation provided for in this resolution ceases, effective the last day of employment.

Filed February 5, 1985

CHAPTER 824

SENATE CONCURRENT RESOLUTION NO. 4030 (Adams)

BANK OF NORTH DAKOTA LOANS STUDY

A concurrent resolution directing the Legislative Council to study the Bank of North Dakota's loan programs.

WHEREAS, the Bank of North Dakota has written off in excess of five million dollars in uncollectible loans during calendar year 1984; and

WHEREAS, writing off uncollectible loans reduces the Bank of North Dakota's capital;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council conduct a study of the Bank of North Dakota's loan programs, including loan policies, status of current loans, and loans written off since January 1, 1983; and

BE IT FURTHER RESOLVED, that the State Auditor's office and the Department of Banking and Financial Institutions and the State Industrial Commission assist the Legislative Council in its 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 825

SENATE CONCURRENT RESOLUTION NO. 4031
(Senators Todd, Heigaard, Nething)
(Representatives Strinden, Mertens)

OUTSTATE SELLERS SALES AND USE TAX

A concurrent resolution urging the Congress of the United States to amend the Interstate Commerce Act to allow states to collect sales or use taxes from outstate sellers.

WHEREAS, companies selling across state lines and who maintain contact with customers solely by the mailing of catalogs and "flyers" and the delivery of goods by the mail or common carriers are commonly referred to as outstate sellers; and

WHEREAS, as a result of a May 8, 1967, United States Supreme Court decision, the state of North Dakota has not been able to enforce collection of sales or use taxes by outstate sellers who use only the mail or common carriers to send customers the ordered goods; and

WHEREAS, the state of North Dakota is therefore deprived of all sales or use tax collections and moneys that result from such transactions, estimated conservatively to be in the millions of dollars each year; and

WHEREAS, as a result of not having to collect sales or use taxes imposed by the state of North Dakota, those outstate sellers possess an unfair competitive price advantage over sellers who have retail outlets, solicitors, or property within North Dakota and who are currently collecting the state's sales or use taxes;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to amend the Interstate Commerce Act to allow individual states to require the collection of sales or use taxes by outstate sellers regardless of contact or delivery with customers; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of Commerce, the chairman of the Senate Committee on Commerce, Science and Transportation, the chairman of the House Committee on Energy and Commerce, and each member of the North Dakota Congressional Delegation.

Filed March 26, 1985

CHAPTER 826

SENATE CONCURRENT RESOLUTION NO. 4032
(Senators Heinrich, Streibel)
(Representatives L. Hanson, Schindler)

CHEMICAL STORAGE STUDY

A concurrent resolution directing the Legislative Council to conduct a study of chemical manufacturing plants and storage facilities in the state near residential areas.

WHEREAS, the production and storage of chemicals is widespread throughout this country; and

WHEREAS, many of these chemicals are highly toxic, flammable, or exhibit other properties dangerous to human life and property; and

WHEREAS, many chemical manufacturing plants and storage facilities, if located near urban or residential areas in this state, may present significant public safety problems;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council conduct a study of chemical manufacturing plants and storage facilities within this state to determine the extent of danger these facilities present for the public health and safety of citizens in this state, especially with regard to the public health and safety hazards which may exist because of chemical manufacturing plants and storage facilities located in or near residential areas and to determine methods to mitigate the dangers presented by the existence of these plants and storage facilities; and

BE IT FURTHER RESOLVED, that the Legislative Council present its findings and recommendations, together with any legislation necessary to implement those recommendations, to the Fiftieth Legislative Assembly.

Filed March 27, 1985

CHAPTER 827

SENATE CONCURRENT RESOLUTION NO. 4034
(Lips)

INCURABLE DISEASE INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the life insurance needs of persons born with incurable diseases.

WHEREAS, due to advances in medical science, many persons who would have formerly died during childhood from the pernicious effects of incurable diseases now live normal adult lives; and

WHEREAS, despite their illness, these persons are capable of being productive members of society; and

WHEREAS, there is a potential for a pooled risks group program to provide life insurance to the citizens of North Dakota born with incurable diseases; and

WHEREAS, with proper legislative support, these persons and their families can lead full, happy, and productive lives and thereby avoid becoming burdensome to the rest of society;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is directed to study the life insurance needs of persons born with incurable diseases; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 828

SENATE CONCURRENT RESOLUTION NO. 4035
(Senators Kusler, Todd)
(Representatives Gunsch, Keller)

KNIFE RIVER INDIAN VILLAGE HISTORIC SITE

A concurrent resolution urging the Secretary of the Interior, the director of the National Park Service, and the regional director of the National Park Service to take all steps necessary to secure funding for the development of the Knife River Indian Villages National Historic Site.

WHEREAS, a significant amount of land was obtained from North Dakota farmers and ranchers to establish the Knife River Indian Villages National Historic Site; and

WHEREAS, much of the original plan for development and expansion of the Knife River Indian Villages National Historic Site has not been implemented; and

WHEREAS, portions of that plan, including a visitors' center complex, a reconstructed Indian village, an archaeological research project, and other historical and research facilities would preserve the historically significant artifacts unique to the Knife River Indian Villages National Historic Site, and make these important pieces of this state's heritage permanently available to the people of North Dakota as well as to visitors from outside the state; and

WHEREAS, the State Indian Affairs Commission and many other interested people and organizations have expressed their continuing support for full development of the Knife River Indian Villages National Historic Site according to the plan set forth over ten years ago;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Secretary of the Interior, the director of the National Park Service, and the regional director of the National Park Service to take all steps necessary in seeking a higher federal priority for Knife River Indian Villages National Historic Site funding; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Interior, the director of the National Park Service, the regional director of the National Park Service, and to each member of the North Dakota Congressional Delegation.

CHAPTER 829

SENATE CONCURRENT RESOLUTION NO. 4036
(Senator Kusler)
(Representative Martinson)

SHELTERBELT STUDY

A concurrent resolution directing the Legislative Council to study problems associated with, and to compile information regarding, the protection and rejuvenation of shelterbelts.

WHEREAS, shelterbelts have many benefits, including shelter for farmsteads and livestock, the protection of soil from erosion, the provision of habitat for wildlife, and the provision of moisture for small grain crops; and

WHEREAS, shelterbelts provide natural beauty and diversify the landscapes of North Dakota, which contain less than one percent forests; and

WHEREAS, existing shelterbelts are declining in number and effectiveness; and

WHEREAS, tree plantings have been on a decline due to the limited selection of hardy tree species capable of withstanding herbicides, harsh growing conditions, insects, diseases, and changes in farming operations; and

WHEREAS, the problems of maintenance and establishment of shelterbelts deter landowners from planting additional shelterbelts, and reduce the success of existing shelterbelts; and

WHEREAS, many of the problems associated with shelterbelts are common to other types of tree plantings, including urban forests, wildlife plantings, reclamation plantings, and reforestation plantings;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study problems associated with, and compile information on the planting and maintaining of new shelterbelts, and the protection and rejuvenation of existing shelterbelts; 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 Fiftieth Legislative Assembly.

CHAPTER 830

SENATE CONCURRENT RESOLUTION NO. 4038
(Senators Todd, Kusler)
(Representatives Hill, Knudson)

FINE ARTS EDUCATION

A concurrent resolution recognizing the importance of fine arts as part of basic school curricula and encouraging the inclusion of fine arts education in the schools' curricula.

WHEREAS, quality education in North Dakota has always been a priority concern for government and community leaders, as well as the general public; and

WHEREAS, the problems of our time and of future generations may be solved through a nurturing of the creative talents in our society; and

WHEREAS, it is essential that our nation, state, and local communities recognize that education in the fine arts is basic to human growth and development; and

WHEREAS, the performing and visual arts offer unsurpassed opportunities for self-expression, and exposure to the fine arts through education programs greatly increases the quality of a child's education and development; and

WHEREAS, the cultural experiences and opportunities provided by a community positively influence the quality of life enjoyed by its citizens and create an exchange of feelings and ideas that contribute greatly to personal growth and community spirit; and

WHEREAS, the College Board identified the fine arts, which include theater, visual arts, dance, creative writing, and music, as one of six "basic academic subjects" that students should master to be successful in college; and

WHEREAS, the arts and humanities are the building materials of civilization and their importance in the lives of every individual cannot be overestimated;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That it is the policy of the state of North Dakota to encourage citizen appreciation of and participation in the fine arts; and

BE IT FURTHER RESOLVED, that the state of North Dakota in its support of excellence in education urges that education in the fine arts be included in all school curricula; and

BE IT FURTHER RESOLVED, that every public school in the state is urged to strive to develop and implement a curriculum and programs designed to promote understanding of and life skills in the fine arts; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of State to the Superintendent of Public Instruction, the North Dakota Council of School Administrators, the North Dakota School Boards Association, and the North Dakota Education Association.

Filed March 26, 1985

CHAPTER 831

SENATE CONCURRENT RESOLUTION NO. 4039 (Senators Nelson, Naaden, Lips)

FEDERAL TAX AND BUDGET CHANGES STUDY

A concurrent resolution directing the Legislative Council to monitor United States Congress and federal agency actions having a fiscal impact on the state of North Dakota.

WHEREAS, the federal deficit is in excess of \$200 billion per year; and

WHEREAS, the President of the United States is planning to reduce the deficit; and

WHEREAS, changes in the federal income tax are under consideration; and

WHEREAS, reductions in federal aid to state and local governments and changes in the federal income tax can have a significant impact on the state budget and the economy of the state of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council's Budget Section monitor federal tax and budget changes affecting the state of North Dakota; and

BE IT FURTHER RESOLVED, that the Budget Section determine whether legislation is necessary because of such changes; and

BE IT FURTHER RESOLVED, that the Budget Section report its findings and recommendations, together with any legislation required to implement the recommendations, to the Legislative Council for submission to the Fiftieth Legislative Assembly or a reconvened or special session should one be called.

Filed March 6, 1985

CHAPTER 832

SENATE CONCURRENT RESOLUTION NO. 4040 (Maixner, Olson)

LAW ENFORCEMENT JURISDICTION STUDY

A concurrent resolution directing the Legislative Council to study existing state law enforcement agencies.

WHEREAS, under current law there are a number of state agencies involved in law enforcement activities; and

WHEREAS, some of those agencies, including the Bureau of Criminal Investigation, the State Fire Marshal, the Criminal Justice Training Division, and the Drug Enforcement Unit, are supervised by the Attorney General; and

WHEREAS, the State Highway Patrol, which now includes the Truck Regulatory Division, transferred from the Highway Department to the Highway Patrol in 1983, and the state radio system, is supervised by the Governor; and

WHEREAS, the State Toxicologist, the State Laboratories Department, and the State Crime Laboratory have forensic and investigative functions within the state law enforcement process and a state forensic investigation system is being proposed; and

WHEREAS, the various state law enforcement agencies possess different degrees of subject matter jurisdiction; and

WHEREAS, a single state law enforcement agency may be a more effective complement to local law enforcement agencies and may also provide a more efficient and effective use of state law enforcement appropriations and personnel;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the jurisdictional limitations of existing state law enforcement agencies and the feasibility of combining any or all existing state law enforcement agencies into a single state law enforcement authority; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to involve state law enforcement officials, local law enforcement officials, and the public 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 Fiftieth Legislative Assembly.

Filed March 27, 1985

CHAPTER 833

SENATE CONCURRENT RESOLUTION NO. 4041
(Senators Wogsland, Satrom, Maixner)
(Representatives Laughlin, O'Connell, Brokaw)

RAIL LINE ABANDONMENT APPROVAL AUTHORITY

A concurrent resolution urging the Congress of the United States to enact appropriate legislation to transfer to the states the power and authority to approve or disapprove rail line abandonments.

WHEREAS, the approval of rail line abandonments is presently under the authority and control of the Interstate Commerce Commission with little input from state government; and

WHEREAS, the question of approval of abandonment of portions of rail line, particularly when the line to be abandoned is located wholly within one state, may uniquely affect the citizens of a state with little impact on interstate commerce or the federal government; and

WHEREAS, rail lines have critical value to the farm economy and state regulation would provide for more localized assessment of the need for the rail line subject to an abandonment application;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States to enact legislation to transfer to the states the power and authority to approve or disapprove abandonment of rail lines in the respective states; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed March 6, 1985

CHAPTER 834

SENATE CONCURRENT RESOLUTION NO. 4042
(Senators Lips, Reiten, Heigaard
(Representatives Graba, A. Hausauer, Hoffner)

STATE TAX WITHHOLDING FOR FEDERAL EMPLOYEES

A concurrent resolution urging Congress and the Secretary of the Treasury to provide for the withholding of state income tax from federal employees who elect to have state income tax withheld from their wages.

WHEREAS, Congress passed a law, 5 U.S.C. 5517, which provided for the Secretary of the Treasury to enter into agreements with a state to withhold state income tax from those federal employees who were subject to state income tax; and

WHEREAS, 5 U.S.C. 5517 restricts the Secretary of the Treasury from entering into an agreement with the state of North Dakota because North Dakota's income tax withholding law would impose a more burdensome requirement upon the United States than is imposed on other employers; and

WHEREAS, North Dakota's income tax withholding law requires an employer to withhold state income tax from only nonresident employees but permits an employer to withhold state income tax from any employee who voluntarily elects to have state income tax withheld from earnings; and

WHEREAS, no greater burden would be imposed upon the United States and other employers if employers, including the United States, would be permitted to withhold state income taxes from those employees who voluntarily elected to have state income tax withheld from wages;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States and the Secretary of the Treasury to provide for the withholding of state income tax by the United States from federal employees who voluntarily elect to have state income tax withheld from their wages; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the North Dakota Secretary of State to the United States Secretary of the Treasury, the chairmen of the House Committee on Ways and Means, the Senate Committee on Finance, the Joint House and Senate Committee on Taxation, and each member of the North Dakota Congressional Delegation.

CHAPTER 835

SENATE CONCURRENT RESOLUTION NO. 4044 (Wright)

INDIAN RESERVATION AREA TAXING AUTHORITY

A concurrent resolution citing the existence of certain conditions of mutual concern confronting reservation and nonreservation residents of North Dakota, and urging the Congress of the United States to exercise responsibility and authority in resolving them.

WHEREAS, the establishment and governance of the several Indian reservations within the state of North Dakota and other states have resulted from treaties and other Acts of the United States government; and

WHEREAS, the federal government through Acts of Congress, has established itself as the sole authority governing local taxation within the boundaries of Indian reservations in the United States, and has tied the hands of states in dealing with local taxing problems and furnishing of governmental services in areas within or near the boundaries of Indian reservations; and

WHEREAS, reservation boundaries have been subject to change over the years since reservations were established, some lands within reservation boundaries are owned in trust and some in fee by Indian and non-Indian landowners, and non-Indian landowners were encouraged by the federal government to homestead lands which are now within reservation boundaries; and

WHEREAS, all of these factors have resulted in areas of taxable lands in and around reservations which have necessitated the furnishing of local governmental services and the subsequent creation of local taxing districts supported by levies of taxes upon lands in and around reservations; and

WHEREAS, the taxable status of lands within reservation boundaries is determined by ownership, which is subject to change, and which may cause removal of the land from local tax rolls by operation of federal law; and

WHEREAS, removal of such lands from local tax rolls operates a hardship on cities, counties, townships, and other taxing

districts, as well as on Indian and non-Indian landowners and residents in and around reservations who have come to rely on present levels of local governmental services and to require increased levels of future local governmental services; and

WHEREAS, since Congress has chosen to retain exclusive control of the ability to tax reservation lands, it is incumbent upon Congress to provide solutions to the dilemma of political subdivisions in and around reservations in the many states of the United States which contain Indian reservations;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Congress of the United States is urged to enact legislation to resolve the problem of shrinking tax bases of political subdivisions providing local governmental services in and around Indian reservations to assure continued availability of local governmental services and the existence of local political subdivisions, or, in the alternative, to establish a study commission, with appropriate representation from affected states and Indian reservations, to determine an appropriate solution to this problem; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of the Senate to the presiding officers of the United States House of Representatives and the United States Senate, the North Dakota Congressional Delegation, the Secretary of the Interior, and the governors and legislative bodies of the states of Arizona, California, Idaho, Minnesota, Montana, New Mexico, Oregon, South Dakota, Washington, Wisconsin, and Wyoming.

Filed March 29, 1985

CHAPTER 836

SENATE CONCURRENT RESOLUTION NO. 4045
(Senators Mushik, Satrom, Lips)
(Representatives Martinson, Rydell, Ulmer)

RESTORATION AT FORT LINCOLN

A concurrent resolution designating the restoration of the Custer Home and other buildings on the Cavalry Square in Fort Lincoln as a North Dakota Centennial Project.

WHEREAS, a significant part of the history of the state of North Dakota is made up of the activities and events that occurred in and around Fort Abraham Lincoln during the period of the Dakota Territory; and

WHEREAS, many of these activities and events were also significant to the history of the United States of America; and

WHEREAS, numerous other historical sites in the state of North Dakota and neighboring states related to Fort Abraham Lincoln are being preserved and developed as recreational areas and points of interest for tourists; and

WHEREAS, the preservation and restoration of the Custer Home and other buildings on the Cavalry Square in Fort Lincoln are of interest to many, and should be the responsibility of all the people of this state; and

WHEREAS, the preservation and restoration of this historical setting is of educational, recreational, and economic value; and

WHEREAS, the objectives of restoring and preserving the Custer Home and other buildings on the Cavalry Square in Fort Lincoln are to stimulate interest in the history of North Dakota, encourage tourism and many forms of recreation in this area, collect information relating to Fort Lincoln, and collect, use, and preserve artifacts for educational and historical purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly designates the restoration of the Custer Home and other buildings on the Cavalry Square in Fort Abraham Lincoln as a North Dakota Centennial Project; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Governor and the North Dakota Centennial Commission.

CHAPTER 837

SENATE CONCURRENT RESOLUTION NO. 4046 (Stromme)

LOBBYISTS STUDY

A concurrent resolution directing the Legislative Council to study the problems presented by lobbyists, representing special interest organizations, who refuse to divulge the membership or sources of financial support of the special interest organizations.

WHEREAS, under the laws of this state, lobbyists are required to identify the special interest groups the lobbyists represent, and provide other information to clarify the interests and parties on whose behalf the lobbyists are working; and

WHEREAS, many lobbyists and the special interest organizations they represent refuse to disclose the sources of financial support or the membership of the special interest organizations; and

WHEREAS, these special interest organizations thereby conceal from the Legislative Assembly, the Governor, and the public the true interests represented by the lobbyists; and

WHEREAS, it is essential to the making of informed, unbiased, and well-reasoned decisions on public issues that the Legislative Assembly, the Governor, and the public know all interests actually represented by lobbyists when those decisions are based in part upon information or advice provided by such lobbyists;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the problems presented by lobbyists who represent special interest organizations without disclosing the membership or sources of financial support of those special interest organizations, and study possible solutions to these problems; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 838

SENATE CONCURRENT RESOLUTION NO. 4047
(Nothing)

JOB DEVELOPMENT COMMISSION STUDY

A concurrent resolution directing the Legislative Council to establish a jobs development commission composed of legislators, officials from the executive branch of government, officials from higher education, and representatives of private industry to study methods and to coordinate efforts to initiate and sustain new economic development and to spur the creation of new employment opportunities for the citizens of this state.

WHEREAS, promotion of the state's economy and expansion of employment opportunities for North Dakota citizens is necessary for the future prosperity of this state and should continue to be a priority on the legislative agenda; and

WHEREAS, the development of new or additional approaches to business, industrial, and technological promotion is necessary if the state of North Dakota is to share in the ever-increasing productive industrial and technological capacity and wealth of the nation; and

WHEREAS, it is highly desirable that all possible public and private efforts be directed in a coordinated and cooperative manner toward the many facets of business, industrial, and technological development, and that the Legislative Assembly also offer its full support and cooperation in such efforts; and

WHEREAS, state government is increasingly being asked by the federal government to assume more responsibility for its own destiny;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council form a jobs development commission composed of legislators, officials from the executive branch of government, officials from higher education, and representatives of private industry to study methods and coordinate efforts to initiate and sustain new economic development in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to apply for, contract for, receive, and expend for its purposes, as provided in Section 54-35-06, any appropriations or grants from the state or its political subdivisions, the federal government, or any other public or private source; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 839

SENATE CONCURRENT RESOLUTION NO. 4049
(Senators W. Meyer, D. Meyer, David)
(Representatives R. Anderson, Murphy)

BRAD GJERMUNDSON CONGRATULATED

A concurrent resolution congratulating Brad Gjermundson on winning his third Professional Rodeo Cowboys' Association world saddle bronc championship in the sport of rodeo.

WHEREAS, the Legislative Assembly recognizes and honors North Dakota citizens for their national accomplishments; and

WHEREAS, Brad Gjermundson's career progressed from the North Dakota High School Team Roping Championship in 1975, to the North Dakota High School Rodeo Saddle Bronc Champion in 1976 and 1977, and North Dakota High School Rodeo "All Around Champion" in 1977; and

WHEREAS, Brad Gjermundson won the North Dakota Rodeo Association Saddle Bronc Championship in 1979, and while competing as a member of the Dickinson State College Rodeo Team won the National Intercollegiate Rodeo Association Saddle Bronc Championship in 1980; and

WHEREAS, Brad Gjermundson captured and thrilled rodeo fans worldwide by winning the Professional Rodeo Cowboys' Association Saddle Bronc Rookie of the Year Award in 1980; and

WHEREAS, Brad Gjermundson has always exemplified the life of a champion in his personal contribution to the handicapped that participate at the Exceptional Children's Rodeo in Oklahoma City, the Northern Plains Rodeo Bible Camp, as well as the Circle "C" Ranch Rodeo Bible Camp, to further the teaching of the christian way of life through the sport of rodeo; and

WHEREAS, Brad Gjermundson has set an example as a world champion for the young people in North Dakota and the nation, showing that personal goals, dedication, and recognition for the State of North Dakota are possible for all young people who give their utmost to their chosen professions; and

WHEREAS, Brad Gjermundson was so honored for the third time, 1981, 1983, and 1984, as Saddle Bronc Champion of the World through his own determination and talent; and

WHEREAS, his feats merit recognition by the State of North Dakota and its citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly take great pride and pleasure in extending its heartiest congratulations to Brad Gjermundson for his superb accomplishments both in and out of the sport of rodeo; and

BE IT FURTHER RESOLVED, that the Secretary of State send enrolled copies of this resolution to Brad and Jackie Gjermundson; his parents, Stan and Sharon Gjermundson; the Professional Rodeo Cowboys' Association in Colorado Springs; and Bob Tallman of Great American Cowboy Network in Eugene, Oregon.

Filed February 28, 1985

CHAPTER 840

SENATE CONCURRENT RESOLUTION NO. 4050
(Wright, Adams, Kilander, Satrom, Dotzenrod)

UNITARY TAXATION STUDY

A concurrent resolution directing the Legislative Council to study existing and alternative methods of unitary taxation.

WHEREAS, state governments have traditionally used formula apportionment to determine an individual state's share of the taxable income of a corporation that operates a business across state or national boundaries; and

WHEREAS, the states which utilize formula apportionment to divide taxable income of corporations operating unitary businesses across state or national boundaries utilize differing methods to determine what corporate income is subject to apportionment; and

WHEREAS, the matter of unitary taxation has become a matter of vital federal and state interest;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the various approaches used or proposed to divide the taxable income of unitary corporations, with emphasis on the report of the Worldwide Unitary Taxation Working Group; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 841

SENATE CONCURRENT RESOLUTION NO. 4051 (D. Meyer, Kilander)

FORT BERTHOLD RESERVATION STUDY

A concurrent resolution directing the Legislative Council, with the assistance of citizen advisers, to study issues of concern to the state and persons living within the boundaries of the Fort Berthold Reservation.

WHEREAS, jurisdictional issues affect the interests of the state and persons living within the boundaries of the Fort Berthold Reservation; and

WHEREAS, federal law may provide the basis for tribal and state agreement to resolve these jurisdictional concerns; and

WHEREAS, a study of these jurisdictional issues should be made to determine whether the potential and existing jurisdictional concerns could be resolved through legislative action as allowed under federal law;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study and make recommendations to the Legislative Assembly and provide its study results and recommendations to the Three Affiliated Tribes regarding the following issues:

1. The feasibility of state legislation under the authority of federal law to resolve jurisdictional issues regarding tribal and state government;
2. State and tribal law and practice regarding the recognition of state and tribal court judgments, especially those affecting the rights of individuals, and whether the rights established by state and tribal court judgments are protected under state and tribal laws;
3. The operation and administration of state tax laws on the Fort Berthold Reservation;

4. The impact on taxing districts of the presence of tax-exempt lands owned by the tribal government and members within the exterior boundaries of the Fort Berthold Reservation and methods to replace funds lost to political subdivisions by the exemption of those lands; and

BE IT FURTHER RESOLVED, that the committee conducting the study hold at least one of its meetings at a convenient site on the Fort Berthold Reservation to allow testimony of local residents regarding the committee's study; and

BE IT FURTHER RESOLVED, that the Legislative Council call upon citizen advisers to serve as members of the study committee and that the citizen membership of the committee include two representatives of affected political subdivisions and two representatives of the Three Affiliated Tribes; 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 Fiftieth Legislative Assembly.

Filed April 5, 1985

CHAPTER 842

SENATE CONCURRENT RESOLUTION NO. 4052
(Senators Olson, Peterson, Freborg)
(Representatives Conmy, Schindler)

COMPULSORY SCHOOL ATTENDANCE STUDY

A concurrent resolution directing the Legislative Council to determine whether the state compulsory school attendance law should be revised to accommodate alternative methods of student instruction.

WHEREAS, the education of this state's elementary and secondary school students is of the utmost importance and concern to all North Dakota citizens; and

WHEREAS, there has been an increasing number of reported cases where students are being educated in nonapproved schools by persons who are not certificated teachers under North Dakota law; and

WHEREAS, a number of states have provided by law for alternative methods of instructing students in parochial schools or home schools which may not be permitted under current North Dakota law; and

WHEREAS, the personal rights of freedom for all parents, the rights of students, and the interests of the state should all be carefully considered in regard to the issue of how compulsory school attendance laws are written and enforced;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council determine whether the state compulsory school attendance laws should be revised to accommodate alternative methods of student instruction; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 843

SENATE CONCURRENT RESOLUTION NO. 4053 (Maixner, Freborg)

SMALL POWER PRODUCER STUDY

A concurrent resolution directing the Legislative Council to study sales and purchases of power produced by producers of small amounts of power.

WHEREAS, North Dakota is blessed with ample renewable energy resources, especially in the form of the winds common to the state; and

WHEREAS, high wind speeds frequently occur during periods of peak electrical demand; and

WHEREAS, the costs of generating or purchasing power during peak demand periods is incrementally more expensive than power generated or purchased during baseload periods; and

WHEREAS, the federal Public Utility Regulatory Policies Act of 1978 [Public Law 95-617] calls for utilities to pay small power producers the cost which the utility would incur for generating or purchasing that power, if not for the small producer; and

WHEREAS, small power producers are now only paid a flat rate for power fed into the lines regardless of when the power was supplied to the utility;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the sales, purchases, and rates paid to producers of small amounts of power, with emphasis on power supplied during periods of peak electrical demand; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, with any legislation required to implement the recommendations, to the Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 844

SENATE CONCURRENT RESOLUTION NO. 4054 (Satrom)

STATE HIGHWAY-MOTOR VEHICLE ADMINISTRATION STUDY

A concurrent resolution directing the Legislative Council to study the regulatory and enforcement authority of the State Highway Department, the Highway Patrol, and the Motor Vehicle Department.

WHEREAS, the regulation of motor vehicles and highways, and the enforcement of statutory provisions relating to motor vehicles and highways, is vested in various state agencies, including the State Highway Department, the Highway Patrol, and the Motor Vehicle Department; and

WHEREAS, the State Highway Department has authority to issue operators' licenses, provides regulations for vehicle height, width, and weight, and otherwise regulates traffic upon the state's highways; and

WHEREAS, the State Highway Department has established 66 regional driver testing and photo sites to issue operators' licenses; and

WHEREAS, the Highway Patrol enforces laws relating to the operation of vehicles on the state highways, and is vested with specific authority under Section 39-03-09 to enforce other state laws; and

WHEREAS, the Motor Vehicle Department issues motor vehicle license plates and registers motor vehicle titles; and

WHEREAS, the Motor Vehicle Department has established 13 branch offices to provide onsite motor vehicle licensing and to receive registration information and fees; and

WHEREAS, these duties of these three agencies should be reviewed to determine whether they are clearly delineated or subject to overlap; and

WHEREAS, consolidation of these regional or branch offices may facilitate administration and reduce expenses;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the regulatory authority of the State Highway Department, the Highway Patrol, and the Motor Vehicle Department over the state's highway system, motor vehicle licensing and registration, operators' licenses issuance, the enforcement of state statutory provisions regarding highways, and the establishment of regional or branch offices; and

BE IT FURTHER RESOLVED, that the study include the desirability of combining or further delineating the duties of the State Highway Department, the Highway Patrol, and the Motor Vehicle Department; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 845

SENATE CONCURRENT RESOLUTION NO. 4055
(Senator Mutch)
(Representatives Wald, Melby)

TRUCKING LAWS STUDY

A concurrent resolution directing the Legislative Council to study motor carrier laws and regulations as they relate to the trucking industry.

WHEREAS, the promotion of a sound, safe, and competitive privately owned motor carrier transportation system is desirable for the benefit of the public; and

WHEREAS, such a competitive system requires the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices; and

WHEREAS, significant changes have occurred in federal law and regulations concerning motor carriers and the transportation industry in general which have had significant economic impact on the trucking industry; and

WHEREAS, economic pressures brought on by these regulatory changes may adversely affect the safety, reliability, and availability of services provided by the trucking industry; and

WHEREAS, lack of uniformity in state laws and regulations concerning trucking can add additional unwarranted burdens to interstate trucking; and

WHEREAS, certain portions of the trucking industry may be suffering a disproportionate amount of adverse effects because of the changes in trucking regulations; and

WHEREAS, the trucking industry is regulated by the state on many different items including rates, safety, routes, competitive practices, consumer relationships, and entry into and exit from the industry;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the effects which existing federal and state laws and regulations are having on trucking in North Dakota, including effects in the areas of safety, efficiency, reliability, availability, adequacy of service, rate of return, lack of regulatory uniformity, adverse and beneficial competition, and other related areas of impact; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 846

SENATE CONCURRENT RESOLUTION NO. 4056 (Christensen, Holmberg, Heinrich, Peterson, Lashkowitz)

CHILD ABUSE PROSECUTION STUDY

A concurrent resolution directing the Legislative Council to study the investigation and prosecution procedures for child abuse and neglect cases and to determine whether state law protects the interests of justice and of all parties involved in such cases.

WHEREAS, child abuse and neglect appears to be a growing problem, with 2,715 cases reported in North Dakota during the year ending July 1, 1984; and

WHEREAS, it is imperative that action be taken to protect children who are being abused or neglected; and

WHEREAS, it is also a great concern that parents, relatives, and child care providers not be falsely accused of offenses regarding the abuse or neglect of children; and

WHEREAS, persons charged with a crime have the right to face and question their accusers; and

WHEREAS, children may be harmed by excessive questioning and cross-examination in court; and

WHEREAS, the National Center of Missing and Exploited Children has issued a guide for state legislators urging revision of state child abuse laws, suggesting new reporting statutes for child abuse cases, extending statutes of limitation in child abuse cases, providing for out of court testimony by children, and eliminating corroboration rules for testimony;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the reporting, investigation, and prosecution procedures of child abuse and neglect cases and to determine whether state law protects the interests of justice and of all parties involved in such cases; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement those recommendations, to the Fiftieth Legislative Assembly.

Filed April 5, 1985

CHAPTER 847

SENATE CONCURRENT RESOLUTION NO. 4058 (Vosper)

GAMES OF CHANCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of allowing the conducting of various games of chance, on an infrequent basis, by small charitable organizations, and to study the licensing process applicable to such events.

WHEREAS, in the past many small clubs and nonprofit organizations conducted fundraisers known as "stags" and by other names, in which participants played various games of chance, such as raffles, roulette, card games, and wheels; and

WHEREAS, from these events the clubs and organizations obtained money with which to fund worthy projects in many small communities, often in situations where no other source of these funds was available; and

WHEREAS, in many small communities and for many small charitable organizations it is not feasible to operate a continuing operation of games allowed under the present charitable gambling law;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the issue of whether charitable organizations should be allowed to hold a small number of events each year at which many different games of chance can be conducted, and for which the licensing process is not cumbersome; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 848

SENATE CONCURRENT RESOLUTION NO. 4060
(Lashkowitz, Christensen, Stenehjem, Redlin, Olson)

CIVIL DISPUTE RESOLUTION STUDY

A concurrent resolution directing the Legislative Council to study alternatives to the present court system for solving civil disputes.

WHEREAS, use of the present court system is a costly and time-consuming method of resolving civil disputes; and

WHEREAS, the adversary method of resolving civil disputes can be traumatizing to all parties involved; and

WHEREAS, arbitration and other nonjudicial procedures may resolve disputes in a more humane and affordable manner;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is directed to study the adequacy and efficiency of the present court system in solving civil disputes and to determine the desirability of implementing alternative methods of dispute resolution such as the use of arbitration as a substitute for, or as a prerequisite to, litigation; 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 Fiftieth Legislative Assembly.

Filed March 28, 1985

CHAPTER 849

SENATE CONCURRENT RESOLUTION NO. 4061 (Lashkowitz, Mutch, Kilander)

DRIVERS LICENSE STUDY

A concurrent resolution directing the Legislative Council to study state laws relating to the issuance, suspension, and revocation of drivers' licenses with specific emphasis on the efficient administration of those laws, the use of uniform terms in the relevant statutes, and the adequacy of drivers' education programs.

WHEREAS, various state agencies, including the State Highway Department, Highway Patrol, and Motor Vehicle Department, are involved in the administration of state laws regarding the issuance, suspension, and revocation of drivers' licenses; and

WHEREAS, state laws providing for the licensing of motor vehicle operators have become increasingly complex and, in some cases, ambiguous or in conflict; and

WHEREAS, it is desirable that all laws relating to the issuance, suspension, and revocation of drivers' licenses be coordinated and, to the extent possible, that uniform terms be used in those laws; and

WHEREAS, it is imperative that the citizens of this state be educated regarding the drivers' licensing laws which apply to them;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study state laws relating to the issuance, suspension, and revocation of drivers' licenses with specific emphasis on the efficient administration of those laws, the use of uniform terms in the relevant statutes, and the adequacy of drivers' education 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 Fiftieth Legislative Assembly.

Filed March 27, 1985

CHAPTER 850

SENATE CONCURRENT RESOLUTION NO. 4062 (Satrom, Holmberg, Kilander, Matchie)

AIRPORT FINANCE STUDY

A concurrent resolution directing the Legislative Council to study the financial basis under which airports in this state and elsewhere operate, including the manner and degree in which scheduled air carriers are the source of the cost of airports, and the extent to which scheduled airlines should help bear these costs.

WHEREAS, the North Dakota Legislative Assembly is concerned about the quality of scheduled airline service to various North Dakota communities; and

WHEREAS, the Legislative Assembly has on several occasions conducted interim studies of issues relating to airports, but these studies have not resolved the problems of financial support for airports that have scheduled airline service; and

WHEREAS, the previous studies of airport financial needs have not resulted in the establishment of a continuing method through which these airports can be financed; and

WHEREAS, the Legislative Assembly has become aware of the need to replace revenue that has been lost to the airports under federal law and court decisions disallowing state property taxation of airline property; and

WHEREAS, disparity exists between what airport operators recite as their financial predicament in dealing with scheduled airlines and what airlines serving the state indicate as their willingness to participate in paying the costs of operating airports; and

WHEREAS, establishing a sound financial basis for our larger airports is of critical importance as this state seeks to retain and enhance air service as an integral part of its transportation system and economic well-being;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is directed to study the financial basis under which airports in this state operate, including an analysis of the manner and degree in which scheduled airlines participate in these costs and an analysis of the potential methods through which the state or political subdivisions might tax airlines or others in order to pay costs in operating airports that have scheduled airline service; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 851

SENATE CONCURRENT RESOLUTION NO. 4064
(Senators Dotzenrod, Kelsh)
(Representatives Lloyd, Stofferahn)

POLITICAL SUBDIVISIONS IMMUNITY STUDY

A concurrent resolution directing the Legislative Council to study governmental immunity for political subdivisions, the desirability of enacting a tort claims act, liability insurance for political subdivisions, and the desirability of enacting a state insurance program to provide coverage for political subdivisions.

WHEREAS, North Dakota Century Code Chapter 32-12.1 provides limited governmental immunity for political subdivisions, including counties, cities, and townships, for acts of negligence or employee omission resulting in civil liabilities; and

WHEREAS, other states have adopted tort claims acts, which limit or eliminate the liability of political subdivisions for certain specified acts, and provide liability for other specified acts within certain recovery limits; and

WHEREAS, other states have enacted state insurance programs to provide insurance for state entities and political subdivisions; and

WHEREAS, many political subdivisions purchase insurance to protect against the risk of liability for civil claims arising from negligent actions as set forth in North Dakota Century Code Chapter 32-12.1; and

WHEREAS, these political subdivisions have found it increasingly difficult to obtain the insurance coverage necessary to protect against these types of risks; and

WHEREAS, the cost of liability insurance coverage for political subdivisions has increased sharply and has become a significant financial burden to political subdivisions;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study governmental immunity for political subdivisions, and the desirability of enacting a tort claims act which specifies the claims for which a political subdivision would be liable; and

BE IT FURTHER RESOLVED, that the study include the desirability of enacting a state insurance program to provide coverage for political subdivisions, the availability and cost of liability insurance for political subdivisions, and alternatives to present liability limits or means of insuring against liability risks which might result in less expensive liability insurance 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 852

SENATE CONCURRENT RESOLUTION NO. 4065
(Parker)

COMPARATIVE NEGLIGENCE STUDY

A concurrent resolution directing the Legislative Council to study the comparative negligence laws and their interaction with the products liability, strict liability, and workmen's compensation laws in light of recent North Dakota Supreme Court decisions.

WHEREAS, North Dakota Century Code Section 9-10-07 provides that contributory negligence does not bar recovery in an action by a person to recover damages for negligence if such contributory negligence was not as great as the negligence of the person against whom recovery is sought, but any damages awarded must be reduced in proportion to the percentage of negligence attributable to the person who is seeking recovery; and

WHEREAS, the decisions of the North Dakota Supreme Court in Mauch v. Manufacturers Sales and Service, Inc., 345 N.W.2d 338 (N.D. 1984), and Day v. General Motors Corp., 345 N.W.2d 349 (N.D. 1984) noted that the comparative negligence statute (Section 9-10-07) does not make specific reference to whether the comparative negligence law is applicable to products liability or strict liability actions or any actions other than actions "to recover damages for negligence"; and that products liability was adopted in North Dakota by the courts after the comparative negligence statute had been enacted by the Legislative Assembly; and

WHEREAS, the North Dakota Supreme Court in Mauch and Day said the comparison of causations under a products liability claim should be on a pure comparative-causation basis, unlike Section 9-10-07, which uses a modified comparative negligence scheme; and

WHEREAS, the North Dakota Supreme Court said that until the Legislative Assembly enacts a law covering the subject the courts would apply the doctrine that "contributing causal negligence or fault shall not bar a recovery in products liability or strict liability actions, but the damages shall be diminished in proportion to the amount of plaintiff's causal negligence or fault."; and

WHEREAS, Section 65-05-06 provides the payment of compensation or other benefits by the Workmen's Compensation Bureau to an injured employee is "in lieu of any and all rights of action whatsoever against the employer" of the injured employee; and

WHEREAS, Section 65-01-09 provides that the workmen's compensation fund is subrogated to the rights of the injured employee or his dependents to the extent of 50 percent of the damages recovered up to a maximum of the total amount the fund has paid or would otherwise pay in the future in compensation and benefits for the injured employee, regardless of the proportionate shares of fault of the parties involved; and

WHEREAS, the North Dakota Supreme Court, in Layman v. Braunschweigische Maschinenbauanstalt, 343 N.W.2d 334 (N.D. 1983), said a third party against whom an action has been brought by an injured employee has no statutory right to contribution from a negligent employer immune from suit by operation of the exclusive remedy provisions of the workmen's compensation statutes, and that any changes in the Comparative Negligence Act or the exclusive remedy provisions and subrogation provisions of the workmen's compensation statutes are matters best left to the Legislative Assembly; and

WHEREAS, the Forty-ninth Legislative Assembly considered, but did not, pass Senate Bill No. 2397 that would have amended Sections 9-10-07 and 65-01-09 in response to the Supreme Court decisions discussed above;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the interaction of the laws concerning comparative negligence, products liability, strict liability, and the exclusive remedy and subrogation provisions of the workmen's compensation statutes, and study the appropriateness of extending application of the Comparative Negligence Act to strict liability, products liability, and workmen's compensation actions; 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 Fiftieth Legislative Assembly.

Filed March 26, 1985

CHAPTER 853

SENATE CONCURRENT RESOLUTION NO. 4066 (Holmberg, Tennesfos, Christensen)

CHARITABLE GAMBLING STUDY

A concurrent resolution directing the Legislative Council to study the status and impact of charitable gambling in this state.

WHEREAS, the issue of charitable gambling has been a sensitive one in this state ever since the introduction of legalized charitable gambling; and

WHEREAS, there has been a significant expansion in the types of activity permitted since the passage of the constitutional amendment authorizing charitable gambling, a notable example being the introduction of the game of twenty-one; and

WHEREAS, charitable gambling in this state has resulted in significant revenues being made available to the state and to local governments, as well as significant donations being made to worthy charitable purposes; and

WHEREAS, the Legislative Assembly deems it desirable that the maximum benefit from charitable gambling accrue to the legitimate charitable needs arising in this state, and that charitable gambling be conducted in this state free from any influence of organized crime or other unsavory elements of society; and

WHEREAS, policing charitable gambling activities, enforcing charitable gambling laws, and other exercise of control over charitable gambling, is difficult, complex, and expensive; and

WHEREAS, proposals have been made to establish a state charitable gambling commission, and the attorney general's office, in its proposal to delete funding for charitable gambling enforcement from its proposed budget for the 1985-87 biennium, has indicated its difficulty in enforcing charitable gambling laws and a desire that this enforcement be the function of an independent agency;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study charitable gambling in this state, and that the study give particular attention to the issues of the direction charitable gambling should take in the future, the feasibility of the establishment of an independent commission to regulate charitable gambling, the difficulties attendant upon enforcement of charitable gambling laws, the intertwining of involvement between local government and state government, the level of gaming tax assessed by the state and its purpose, the extent to which charitable gaming proceeds are returned to the state or the communities in which they are generated, and whether the Constitution should be further amended to limit or expand permitted charitable gambling activities; and

BE IT FURTHER RESOLVED, that the Legislative Council seek the input of private citizens in this state, both proponents and opponents of gaming expansion, who have expertise and knowledge of the many facets of charitable gaming, and report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fiftieth Legislative Assembly.

Filed April 5, 1985

CHAPTER 854

SENATE CONCURRENT RESOLUTION NO. 4067
(Senators Wenstrom, Bakewell)
(Representatives Rice, Hughes, Opedahl)
(Approved by Committee on Delayed Bills)

FORT UNION RESTORATION

A concurrent resolution urging the Congress of the United States to appropriate funds for the restoration of the Fort Union fur trading post on the North Dakota-Montana border.

WHEREAS, in 1978 the Congress of the United States passed legislation authorizing the restoration of Fort Union, an American Fur Company trading post on the North Dakota-Montana border; and

WHEREAS, United States Senators Mark Andrews and Quentin Burdick, as members of the Senate Interior Appropriations Subcommittee, along with United States Senators Max Baucus and John Melcher and United States Representatives Byron Dorgan and Ron Marlenee, all support legislation authorizing funds to be included in the 1986 fiscal year appropriations bill for the restoration of Fort Union; and

WHEREAS, the original legislation designating the Fort Union fur trading post as a National Historic Site was passed by the United States Congress in 1966; and

WHEREAS, the intent of the legislation was the reconstruction of Fort Union, but only partial archaeological work has been accomplished; and

WHEREAS, Fort Union's presence beginning in 1828 near the junction of the Missouri and Yellowstone Rivers guaranteed the 49th parallel as the northern boundary of the United States; and

WHEREAS, the Missouri River served as the Oregon Trail of the North with the first steamboat on the Upper Missouri River arriving at Fort Union in June 1832; and

WHEREAS, Fort Union was the finest and most imposing fur trading post in the West and is the only fur trading post in the West which can fully and correctly interpret the western American fur trade; and

WHEREAS, the existence of Fort Union opened the land drained by the Missouri and Yellowstone Rivers; and

WHEREAS, Fort Union became a mecca for internationally famous artists, explorers, scientists, and European royalty; and

WHEREAS, regional support for the project is overwhelming, as evidenced by a doubling in number of visitors to the historic site in the past two years;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly strongly urges the Congress of the United States to appropriate funds for the restoration of the Fort Union fur trading post; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to the chairmen of the United States House and Senate Committees on Interior and Insular Affairs, the United States Secretary of the Interior, the director of the National Park Service, and to each member of the North Dakota and Montana Congressional Delegations.

Filed March 27, 1985

CHAPTER 855

SENATE CONCURRENT RESOLUTION NO. 4068
(Reiten, Redlin, Holmberg, Nething, Kilander)
(Approved by the Committee on Delayed Bills)

AMTRAK PASSENGER SERVICE

A concurrent resolution urging Congress to take appropriate steps to ensure continued and improved AMTRAK passenger service.

WHEREAS, AMTRAK, the corporation designated by Congress to provide a minimum basic national rail passenger service, provides essential passenger transportation services to North Dakota and the nation which may be lost if Congress approves elimination of federal subsidies for AMTRAK; and

WHEREAS, AMTRAK provides the only nationwide passenger rail service available and carries more than 20 million passengers per year; and

WHEREAS, AMTRAK has realized substantial improvements in its revenue-to-cost ratio in recent years, exceeding congressionally set goals; and

WHEREAS, subsidies for other transportation systems far exceed current subsidies provided AMTRAK; and

WHEREAS, AMTRAK provides jobs and other economic benefits, and shutting down the passenger service would result in extreme economic loss and waste;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That Congress is urged to take appropriate steps to ensure continued and improved AMTRAK service on those routes in operation within the current basic system; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the president of AMTRAK, the Secretary of the United States Department of Transportation, the Secretary of the United States Senate, the Chief Clerk of the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 1985

CHAPTER 856

SENATE CONCURRENT RESOLUTION NO. 4069
(Senator Parker)
(Representative Winkelman)
(Approved by the Committee on Delayed Bills)

OFFICIAL PHOTOGRAPHER

A concurrent resolution to appoint an official photographer for the Forty-ninth Legislative Assembly, to set forth the photography order, and to authorize payment.

WHEREAS, for historical purposes it has been the custom of all North Dakota Legislative Assemblies to have composite group pictures made for all members of such assemblies; and

WHEREAS, Dinger Photography offers to take five color proof photographs of each Senator, each Representative, the Lieutenant Governor, the Secretary of the Senate, the Assistant Secretary of the Senate, the Senate Desk Reporter, the Senate Sergeant-at-Arms, the Senate Bill Clerk, the Chief Clerk of the House, the Assistant Chief Clerk of the House, the House Desk Reporter, the House Sergeant-at-Arms, and the House Bill Clerk, and to retouch the final prints to compile a composite color picture of all Senate members and named employees, the Lieutenant Governor, and all House members and named employees, framed and ready to hang, and individual composite photographs to be furnished to each member; all the foregoing at a total cost of \$2,395;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That Dinger Photography of Bismarck, North Dakota, be and is hereby appointed official photographer for the Forty-ninth Legislative Assembly of the state of North Dakota; and

BE IT FURTHER RESOLVED, that Dinger Photography of Bismarck, North Dakota, is hereby awarded the sole privilege of photographing members of the Senate and the House of Representatives, the Lieutenant Governor, and the above-named legislative employees of the Forty-ninth Legislative Assembly, at the total cost of \$2,395 to be charged as a legislative expense; and

BE IT FURTHER RESOLVED, that the photographs shall be delivered pursuant to a contract entered into between Dinger Photography and the photography committees of the Senate and House of Representatives.

Filed March 28, 1985

CHAPTER 857

SENATE CONCURRENT RESOLUTION NO. 4070

(Wenstrom)

(Approved by the Committee on Delayed Bills)

SMALL RURAL HOSPITAL STUDY

A concurrent resolution directing the Legislative Council to study the problems faced by small rural hospitals in this state and possible alternative courses of action for the state and these hospitals to ensure the continued viability of the small rural hospital in North Dakota.

WHEREAS, delivery of health care in rural areas presents special challenges to both the health care consumer and the health care provider in the areas of access to health care, health care financing, recruitment and retention of health care personnel, modernization of facilities, and acquisition of costly high technology health care equipment; and

WHEREAS, especially in the rural communities, the elderly are becoming a greater percentage of the population, with many small, rural communities in the state having 30 percent or more of their population in the over 65 age group, which has greater health care needs; and

WHEREAS, agriculture has the second highest rate of death and disability of all occupations, thus requiring access to adequate local health care facilities; and

WHEREAS, North Dakota has a greater proportion of small or rural community hospitals than the national average; and

WHEREAS, one of the many adverse factors being faced by small rural hospitals is the changing nature of government involvement, including prospective reimbursement systems and other changes, designed from an urban perspective to deal with urban situations that may or may not coincide with the needs and values involved in providing health care in the rural areas; and

WHEREAS, many of this state's rural hospitals face closure in the near future if present conditions and trends are allowed to continue; and

WHEREAS, the closure of small rural hospitals not only has a direct impact on the local economy and on the access to health care, but also has an indirect effect through increased difficulty in attracting businesses as well as primary care physicians; and

WHEREAS, the closure of small rural hospitals increases travel costs to patients residing in the area and increases their costs of receiving health care at the major health care centers because the time and distance factors lead to longer hospital stays because of the difficulty in monitoring the patients' health after they return to isolated rural areas;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the problems faced by small rural hospitals in this state, and possible alternative courses of action for these hospitals and the state to ensure the continued viability of small rural hospitals in 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 Fiftieth Legislative Assembly.

Filed April 1, 1985

CHAPTER 858

SENATE CONCURRENT RESOLUTION NO. 4071
(Nething, Nelson, Vosper)
(Approved by the Committee on Delayed Bills)

CCC LOAN COMMODITY ROTATION

A concurrent resolution urging the Congress of the United States, the Secretary of Agriculture, and the board of directors of the Commodity Credit Corporation to consider allowing rotation of commodities held as collateral on Commodity Credit Corporation loans at earlier dates.

WHEREAS, the Commodity Credit Corporation makes a substantial number of grain production loans in North Dakota, taking liens upon produced grain; and

WHEREAS, the Commodity Credit Corporation allows on-farm storage of commodities subject to liens; and

WHEREAS, reserve commodities which are subject to liens may be released to the producer 30 days prior to the date upon which the producer intends to have replacement commodities in place; and

WHEREAS, replacement commodities are normally generated through the harvest of grain; and

WHEREAS, reserve commodities could be released at a time earlier than 30 days prior to replacement, to allow producers to sell reserve commodities and use the proceeds generated from the sale of the commodities to finance that year's crop production; and

WHEREAS, earlier release of reserve commodities could aid in developing more orderly marketing of commodities; and

WHEREAS, rules and regulations could be adopted under the program to make it applicable to commodity producers who are in need of funds to cover operating expenses; and

WHEREAS, the risk experienced by the Commodity Credit Corporation under a program authorizing earlier release of reserve commodities could be reduced by requiring participants to acquire crop insurance on replacement commodities;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the Congress of the United States, the Secretary of Agriculture, and the board of directors of the Commodity Credit Corporation to investigate the possibility of authorizing earlier rotation releases of commodities subject to Commodity Credit Corporation liens, at a time sufficiently early to allow producers, using the funds generated from the commodity sale, to finance that year's production; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the chairman of the Senate and House Committees on Agriculture, the Secretary of Agriculture, and the board of directors of the Commodity Credit Corporation, and each member of the North Dakota Congressional Delegation.

Filed April 5, 1985

CHAPTER 859

SENATE CONCURRENT RESOLUTION NO. 4073
(Satrom)
(Approved by the Committee on Delayed Bills)

SBA CONTINUATION

A concurrent resolution urging the President and the Congress of the United States to support continuation of the Small Business Administration.

WHEREAS, the Small Business Administration has a proven record of service to small business in the state of North Dakota and throughout the United States; and

WHEREAS, the current Small Business Administration's North Dakota portfolio includes more than 2,200 North Dakota small businesses with loans totaling over \$150 million; and

WHEREAS, for many years the Small Business Administration has carried out disaster and loan assistance of tremendous value to North Dakota small businesses during difficult times; and

WHEREAS, 140 North Dakota banks are affiliated as correspondent banks with the Small Business Administration; and

WHEREAS, thousands of North Dakotans have utilized the Small Business Administration as a source of last resort for borrowed capital; and

WHEREAS, the Small Business Administration has been an important source of borrowed capital with proven success in helping North Dakota small business; and

WHEREAS, the administration proposes to eliminate the Small Business Administration entirely in fiscal year 1986 without an alternative program to assist small businesses;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly urges the President of the United States and the Congress of the United States to support continuation of the Small Business Administration; and

BE IT FURTHER RESOLVED, that the Secretary of the Senate send enrolled copies of this resolution to the President of the United States, the presiding officers of the United States House of Representatives and United States Senate, and each member of the North Dakota Congressional Delegation.

Filed April 5, 1985

CHAPTER 860

SENATE CONCURRENT RESOLUTION NO. 4074
(Lips)
(Approved by the Committee on Delayed Bills)

YMCA MODEL LEGISLATURE SUPPORT

A concurrent resolution expressing the support of the Forty-ninth Legislative Assembly and urging cooperation for the Young Men's Christian Association model legislature program.

WHEREAS, the first YMCA State Youth and Government Program was initiated in New York in 1936, and since that time over 40 states have developed similar programs; and

WHEREAS, the purpose of the YMCA's model legislature program is to enhance development of the American democratic system by enabling young people to prepare for moral and political leadership through training in the theory and practice of determining public policy; and

WHEREAS, the YMCA model legislatures held following previous legislative sessions have been successful events allowing numerous young North Dakotans to gain a better understanding of the legislative process; and

WHEREAS, having such a program continue in this state can provide a major vehicle to help young people to really know about and become interested in government and the citizen's role in it; and

WHEREAS, among the goals for youth involvement in such a program are the development of confidence in and dedication to the democratic process, the gaining of communications skills, the learning of accountability and respect for other's rights, and the application of moral and ethical valuation processes to public policymaking;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly express its support for the YMCA model state legislature to be held on Friday and Saturday, April 19-20, 1985, and on dates yet to be selected in 1986, in the House and Senate chambers of the State Capitol in Bismarck; and

BE IT FURTHER RESOLVED, that those members of the Senate and House who are requested to participate in the program make every effort to arrange their schedules to be able to do so, and that the staff of the Legislative Council and the Director of Institutions' office render such reasonable assistance as may be necessary to make the program a success.

Filed April 1, 1985

CHAPTER 861

SENATE CONCURRENT RESOLUTION NO. 4075
(Wenstrom)
(Approved by the Committee on Delayed Bills)

INDIAN RESERVATION JURISDICTION STUDY

A concurrent resolution directing the Legislative Council to study the issue of state courts' jurisdiction over civil cases which arise within the exterior boundaries of Indian reservations and to urge a concurrent study by the Congress of the United States.

WHEREAS, loss of rights to Indians and non-Indians has occurred within the exterior boundaries of Indian reservations located in this state since statehood because of the lack of state civil jurisdiction within those boundaries; and

WHEREAS, the great hope of obtaining justice on the Indian reservations of this state reflected in the report of the Legislative Research Committee to the Thirty-eighth Legislative Assembly has not materialized through the procedure provided under Chapter 27-19 of the North Dakota Century Code; and

WHEREAS, 22 years have now elapsed since the adoption of Chapter 27-19 with no prospects in sight for ensuring justice in civil cases exceeding the present \$300 jurisdictional limit of tribal courts within the exterior boundaries of Indian reservations of this state; and

WHEREAS, the Congress of the United States has further complicated the matter of resolving Indian jurisdiction problems through the enactment of amendments to Public Law 280 in 1968 and by the enactment of the Indian's Civil Rights Act [Pub. L. 90-284, Sections 401, 402, 406, 82 Stat. 78-80; 25 U.S.C. Sections 1321, 1322, 1326]; and

WHEREAS, the Supreme Court of this state in the case Three Affiliated Tribes v. Wold Engineering, Civil No. 10,172, has analysed the problem of state courts' jurisdiction over Indian reservations and has urged the attention not only of the Legislative Assembly of the state of North Dakota, but also the Congress of the United States;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the problem of civil jurisdiction within the exterior boundaries of the Indian reservations of this state; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to include on the committee assigned to study this matter a representative from each of the Indian reservations of this state and an equal number of representatives from the North Dakota Association of Counties; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to hold hearings on the respective Indian reservations and at appropriate county seats, and to meet with a like committee created by the Congress of the United States, if possible, and to meet and confer with other appropriate state and federal officials as well as the North Dakota Congressional Delegation; and

BE IT FURTHER RESOLVED, that the Legislative Council seek the assistance of the Governor of this state and the North Dakota Congressional Delegation in securing the creation of a national committee to study the problems of civil jurisdiction within the exterior boundaries of Indian reservations throughout the United States, and to consider, among other things, amending federal law:

1. To require that Indian people accept state civil jurisdiction within the exterior boundaries of reservations;
2. To create a federal court to hear civil cases arising within the exterior boundaries of reservations; or
3. To transfer such cases to existing federal courts; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement those recommendations, to the Fiftieth Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the leadership of the United States House of Representatives, including the Speaker, the Majority Leader, the Majority Whip, the Minority Leader, and the Minority Whip; the leadership of the Senate, including the Majority Leader, the Majority Whip, the Minority Leader, and the Minority Whip; the members of the North Dakota Congressional Delegation; the Governor; the Attorney General; the United States Attorney for North Dakota; the Executive Director of the North Dakota Association of Counties; the Executive Director of the Indian Affairs Commission; the President of the United States; the Vice President of the United

States; the Secretary of the Interior; and the Attorney General of the United States.

Filed April 1, 1985

CHAPTER 862

SENATE CONCURRENT RESOLUTION NO. 4077
(Senators Nething, Heigaard)
(Representatives Strinden, Mertens, R. Hausauer)
(Approved by the Committee on Delayed Bills)

LEGISLATIVE ASSEMBLY ANNIVERSARY

A concurrent resolution commemorating the 100th anniversary of the first meeting of the Dakota Territorial Legislative Assembly in Bismarck and the 50th anniversary of the first session of the North Dakota Legislative Assembly in the present State Capitol.

WHEREAS, the Dakota Territorial Legislative Assembly first met in Bismarck in 1885 after meeting in Yankton, South Dakota, from the creation of Dakota Territory in 1861 until 1885; and

WHEREAS, after a disastrous fire destroyed the original State Capitol, the North Dakota Legislative Assembly first met in the present State Capitol for the Twenty-fourth Legislative Assembly in 1935; and

WHEREAS, 1985 marks the 100th anniversary of the first meeting of the Dakota Territorial Legislative Assembly in Bismarck and the 50th anniversary of the first meeting of the North Dakota Legislative Assembly in the present State Capitol; and

WHEREAS, the commemoration of these historic events deserves the attention and participation of members of the Legislative Assembly and other leaders and citizens of this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the members of the Forty-ninth Legislative Assembly will commemorate the 100th anniversary of the first meeting of the Dakota Territorial Legislative Assembly in Bismarck and the 50th anniversary of the first meeting of the North Dakota Legislative Assembly in the present State Capitol with appropriate programs on Thursday, March 28, 1985, beginning at 3:30 p.m. in the respective legislative chambers; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Chief Justice, former governors, former lieutenant governors, and former members of the Supreme Court.

Filed March 26, 1985

CHAPTER 863

SENATE CONCURRENT RESOLUTION NO. 4078
(Senators Nething, Heigaard)
(Representatives Strinden, Mertens)
(Approved by the Committee on Delayed Bills)

GOVERNOR-CANADIAN OFFICIAL DISCUSSIONS

A concurrent resolution urging the Governor of the state of North Dakota to invite the Premier of the province of Manitoba, Canada, and other leaders of the Manitoba government to meet with North Dakota leaders of the legislative and executive branches of government to discuss issues of mutual concern between the two governments and the people they represent in order to arrive at mutually acceptable and beneficial solutions to those issues.

WHEREAS, the people of the state of North Dakota and the province of Manitoba have long enjoyed a continuing friendly and cooperative relationship characterized by common good will; and

WHEREAS, leaders of the legislative and executive branches of government of the state of North Dakota and the leaders of the government of the province of Manitoba regularly address many issues of common concern relating to agriculture, the management of water resources, economic development and tourism, and the environment; and

WHEREAS, it would be in the best interests of both North Dakota and Manitoba citizens if such issues of common concern were cooperatively addressed by leaders of both governments and resolved in a fashion bringing about mutually beneficial results; and

WHEREAS, officials from the legislative and executive branches of government of the state of North Dakota and the officials of the government of the province of Manitoba should avail themselves of the vast technical resources abundant in both jurisdictions to assess and address common issues of concern; and

WHEREAS, the highest officials from the legislative and executive branches of government of the state of North Dakota and the highest officials of the government of the province of Manitoba should meet on a regular basis to discuss items of mutual interest;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Governor of the state of North Dakota is urged to invite the Premier of the province of Manitoba, Canada, and other leaders of the Manitoba government to meet with North Dakota leaders of the legislative and executive branches of state government to discuss issues of mutual concern between the two governments and the people they represent in order to arrive at mutually acceptable and beneficial solutions to those issues; and

BE IT FURTHER RESOLVED, that such meetings between the leaders of the two governments be held alternately in North Dakota and Manitoba on a regular semiannual basis; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Honorable George A. Sinner, Governor of North Dakota, and the Honorable Howard Russell Pawley, Premier of Manitoba, Canada.

Filed April 1, 1985

CHAPTER 864

SENATE CONCURRENT RESOLUTION NO. 4079
(Satrom, Lips, Heinrich, Olson)
(Approved by the Committee on Delayed Bills)

BISMARCK DEMONS WRESTLING TEAM

A concurrent resolution congratulating the Bismarck High School Demons wrestling team for its national record-setting winning streak.

WHEREAS, the Bismarck High School Demons wrestling team has won 171 consecutive dual meets since 1971; and

WHEREAS, this winning streak is a national record for wrestling and may be a national record for all sports; and

WHEREAS, the Bismarck Demon athletic program has been led by Bismarck Public School Athletic Director Dick Karlgaard throughout the period of this phenomenal winning streak; and

WHEREAS, the Demon wrestling coaches during the streak included State Representative Jerry Halmrast, Mike Schaff, and Mark Carter; and

WHEREAS, Demon wrestling teams have won 17 state team championships, and Demon wrestlers have won 63 individual championships; and

WHEREAS, three former Demons, Phil Reimnitz, Lee Peterson, and Mark Reimnitz, have won National Collegiate Athletic Association championships; and

WHEREAS, Coach Jerry Halmrast was named National Coach of the Year in 1973, and Dick Karlgaard was named District 7 Athletic Director of the Year in 1980 and 1983; and

WHEREAS, the Bismarck Demon wrestling team has brought national attention and renown to Bismarck and this state and recognition to the high quality activities program carried on throughout the North Dakota High School Activities Association;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly of the State of North Dakota extends its sincere and hearty congratulations to the Bismarck High School Demons wrestling team and the individuals who have taken part in that program for their outstanding athletic achievements; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the superintendent of the Bismarck school system, Bismarck School Board, Bismarck High School Athletic Department, and the North Dakota High School Activities Association.

Filed April 5, 1985

CHAPTER 865

SENATE CONCURRENT RESOLUTION NO. 4080
(Committee on Appropriations)
(Approved by the Committee on Delayed Bills)

ELDERLY PERSONS SERVICES STUDY

A concurrent resolution directing the Legislative Council to study existing services provided for vulnerable elderly persons, whether the delivery of those services might be better coordinated, and whether existing services are adequate in scope to protect elderly incapacitated persons.

WHEREAS, the Legislative Assembly has recognized the need to provide certain protective services for abused and neglected children; and

WHEREAS, elderly incapacitated persons are subject to neglect and abuse and may require special protective services; and

WHEREAS, estimates indicate that nationwide between 500 thousand to one million elderly persons are abused by their caretakers or others each year; and

WHEREAS, the problem of abuse of elderly adults, however extensive now, is compounding every year because of the growing population of persons over 65 years of age and the problem therefore requires a broadly based set of solutions; and

WHEREAS, there may exist a need to develop a more coordinated and systematic approach for the delivery of existing services or additional services on a statewide basis to address the needs of elderly incapacitated persons;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study existing services for vulnerable elderly persons, whether the delivery of those services might be better coordinated, and whether existing services are adequate in scope to protect elderly incapacitated persons; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement those recommendations, to the Fiftieth Legislative Assembly.

Filed April 5, 1985

CHAPTER 866

SENATE CONCURRENT RESOLUTION NO. 4081
(Reiten, Redlin)

GARRISON DIVERSION STUDY URGED

A concurrent resolution reaffirming legislative support for Garrison Diversion and the Lonetree Reservoir, and requesting the Governor to initiate a study of the possible adverse effects of transfers of fish species, biota, and pathogens from the Missouri River Basin to the Hudson Bay Drainage Basin.

WHEREAS, the future development of irrigation, and industrial, residential, and recreational water uses in the northern and eastern parts of North Dakota, depends upon the diversion of Missouri River Basin water; and

WHEREAS, the future diversion of Missouri River water into the Hudson Bay Drainage Basin requires the completion of the Lonetree Reservoir; and

WHEREAS, opponents of diverting Missouri River water are seeking action in the Congress of the United States to revoke the authorization for the construction of the Lonetree Reservoir, based upon claims of adverse effects of transfers of fish species, pathogens, and biota from the Missouri River to the Hudson Bay Drainage Basin; and

WHEREAS, no scientific studies have been undertaken to verify or discount these claims; and

WHEREAS, it is in the best interest of the United States, the state of North Dakota, the Garrison Diversion Conservancy District, the Dominion of Canada, and the province of Manitoba, to conduct such studies as are necessary to verify or discount these claims; and

WHEREAS, the Garrison Diversion Conservancy District and the Bureau of Reclamation have funds necessary to carry out such studies, with possible assistance from the federal government of Canada and the province of Manitoba; and

WHEREAS, it is of paramount importance that Congress, in considering the increasing pressure to revoke authorization for the

construction of the Lonetree Reservoir, understand that North Dakota remains firm in its demand for the construction of the Lonetree Reservoir, and that North Dakota supports a study of the transfer of fish species, biota, and pathogens, and possible adverse effects of these transfers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly reaffirms its historic support for the completion of the Garrison Diversion Project, and specifically for the completion of the Lonetree Reservoir; and

BE IT FURTHER RESOLVED, that the Forty-ninth Legislative Assembly requests the Governor of North Dakota to initiate a study of the possible adverse effects of transfers of fish species, biota, and pathogens between the Missouri River Basin and the Hudson Bay Drainage Basin, and that the Garrison Diversion Conservancy District, the Bureau of Reclamation, the federal government of Canada, and the provincial government of Manitoba be requested to help fund and participate in the study; and

BE IT FURTHER RESOLVED, that the Garrison Diversion Overview Committee be apprised of the developments and conclusions of the study and that a progress report on the study be made by the Governor to the Fiftieth Legislative Assembly; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Governor, the Bureau of Reclamation, the Garrison Diversion Conservancy District, the Garrison Diversion Overview Committee, the Dominion of Canada, and the provincial government of Manitoba.

Filed April 5, 1985

CHAPTER 867

SENATE CONCURRENT RESOLUTION NO. 4032
(Senators Nething, Heigaard)
(Representatives Strinden, Mertens)
(Approved by the Committee on Delayed Bills)

DOCTOR OF THE DAY PROGRAM

A concurrent resolution expressing the thanks and appreciation of the Forty-ninth Legislative Assembly to the North Dakota Medical Association's Doctor of the Day Program.

WHEREAS, many practicing physicians from throughout the state, as well as resident physicians from the University of North Dakota School of Medicine family medicine and internal medicine residency programs in Minot, Grand Forks, Fargo, and Bismarck, have volunteered their services as the Doctor of the Day during the Forty-ninth Legislative Assembly; and

WHEREAS, more than 200 legislators, legislative employees, family members, lobbyists, and visitors to the Capitol have received treatment, counseling and medications through the Doctor of the Day Program at no charge; and

WHEREAS, the North Dakota Medical Association, the North Dakota State Board of Pharmacy, the Bismarck Family Practice Center, the Bismarck Pharmacy, and the State Health Department have all provided services, equipment, or supplies to the Doctor of the Day medical services room;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That thanks and appreciation are expressed to the physicians and health care groups who have volunteered their professional services, expertise, supplies, and equipment in the operation of the 1985 North Dakota Medical Association's Doctor of the Day Program; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the above-mentioned health care providers and entities.

Filed April 9, 1985

CHAPTER 868

SENATE CONCURRENT RESOLUTION NO. 4083
(Committee on Employment)
(Approved by the Committee on Delayed Bills)

LEGISLATIVE EMPLOYEES RETAINED

A concurrent resolution authorizing the retention of certain employees of the Senate and House and providing supervisory authority, to allow for the completion of legislative work after the close of the Session.

WHEREAS, it is necessary to complete and close all legislative work; and

WHEREAS, in order to complete and close all current legislative work of the Forty-ninth Legislative Assembly, it is necessary to retain certain employees;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following named positions may be retained by the Senate and House of Representatives after the close of the regular session:

SENATE POSITIONS

Secretary of the Senate
Desk Reporter
Sergeant-at-Arms
Assistant Secretary of the Senate
Bill Clerk
Chief Stenographer and Payroll Clerk
Appropriations Committee Clerk
Assistant Appropriations Committee Clerk
Chief Committee Clerk
Chief Page and Bill Book Clerk
Secretary to Majority Leader
Secretary to Minority Leader
Assistant Sergeants-at-Arms
Chief Bill and Journal Room Clerk
Journal Room Clerks

HOUSE POSITIONS

Chief Clerk
Desk Reporter
Assistant Chief Clerk
Bill Clerk
Sergeant-at-Arms
Assistant Sergeants-at-Arms
Chief Page
Pages
Desk Page
Chief Steno and Payroll Clerk
Chief Telephone Clerk
Appropriations Committee Clerk
Assistant Appropriations Clerks
Secretary to Speaker
Secretary to Majority Leader
Secretary to Minority Leader
Bill Room Clerks

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, shall be employed for not 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. It is the duty of the Secretary of the Senate and the Chief Clerk of the House to 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 limits on man-days set out herein. 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 Senate Concurrent Resolution No. 4029 for all work required pursuant to this resolution, and all of these sums are to be paid out of the appropriation to the Forty-ninth and Fiftieth Legislative Assemblies, and paid at the completion of the legislative work, providing that payment shall not be authorized for more than 200 man-days in the aggregate, and each employee above-listed shall be paid on a pro rata basis, should the total number of man-days exceed the allowed limit.

Filed April 9, 1985

CHAPTER 869

SENATE CONCURRENT RESOLUTION NO. 4084
(Senators Matchie, Tennesos)
(Representatives Moore, Nalewaja, R. Berg)
(Approved by the Committee on Delayed Bills)

NDSU CLUB HOCKEY TEAM CONGRATULATED

A concurrent resolution congratulating the North Dakota State University Bison Club Hockey Team for winning the 1985 National Collegiate Club Hockey Tournament held at Huntsville, Alabama, on March 1, 2, and 3, 1985.

WHEREAS, the North Dakota State University Bison Club Hockey Team completed its first full season of collegiate competition by compiling an impressive record of 24 wins and only 6 losses, culminating in the National Championship title at the National Collegiate Club Hockey Tournament in Huntsville, Alabama; and

WHEREAS, the North Dakota State University Bison Club Hockey Team, coaches, advisor, financial contributors, students, boosters, and fans have all contributed to making collegiate hockey at North Dakota State University a reality and a huge success in the first full year of competition; and

WHEREAS, the North Dakota State University Bison Club Hockey Team's outstanding season and National Championship are accomplishments of which all North Dakotans can be justifiably proud;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Forty-ninth Legislative Assembly takes great pride and pleasure in extending its congratulations to the North Dakota State University Bison Club Hockey Team which consists of team members Jeff Aikens, Todd Akkanen, Wade Amundson, Matt Andrews, Mike Berg, Tom Bruce, Bill Bye, Ryan Christianson, Mike Duffey, Tom Folske, Erick Grafstrom, Jeff Iverson, Greg LaDouceur, Jim Mikkelson, Doug Odegaard, Terry Pavek, John Schacher, Don Smith, Elliott Solheim, Kary Strandell, Bill Strauss, Student Trainer Scott Johnson, Head Coach Dave Morinville, Assistant Coach Jim Shaw, and Faculty Advisor, Dr. Bob Nielsen, for their most successful season and for winning the 1985 National Collegiate Club Hockey Tournament; 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, to Head Coach Dave Morinville, and to Faculty Advisor, Dr. Bob Nielsen.

SENATE CONCURRENT MEMORIAL RESOLUTION

CHAPTER 870

SENATE CONCURRENT MEMORIAL RESOLUTION NO. 1
(Senator Stenehjem)
(Representatives Hamerlik, Cleveland)
(Approved by the Committee on Delayed Bills)

DR. ELWYN ROBINSON MEMORIALIZED

A concurrent memorial resolution extending sympathy and condolence to the family of Dr. Elwyn B. Robinson.

WHEREAS, God in his infinite wisdom has seen fit to summon from our midst Dr. Elwyn B. Robinson, who was a professor of history at the University of North Dakota and a noted North Dakota historian; and

WHEREAS, Dr. Robinson taught at the University of North Dakota for 35 years; authored the definitive text on North Dakota history entitled "History of North Dakota"; and received several distinguished teaching awards including being named University professor, the University of North Dakota's highest teaching rank; and

WHEREAS, Dr. Robinson's written analysis of North Dakota history and politics will be for many decades the benchmark against which future state historical publications will be judged;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That we express our deep sorrow and extend to all members of Dr. Robinson's family our sincere sympathy and condolence in this their time of sorrow; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to the family of Dr. Elwyn B. Robinson.

Filed April 1, 1985

CHAPTER 871

SENATE MEMORIAL RESOLUTION NO. 1
(Senator Tallackson)

LYDIA O. JACKSON MEMORIALIZED

A memorial resolution extending sympathy and condolence to the family of Mrs. Lydia O. Jackson.

WHEREAS, God in his infinite wisdom has seen fit to summon from our midst Mrs. Lydia O. Jackson, Poet Laureate of the State of North Dakota; and

WHEREAS, Mrs. Lydia O. Jackson rendered outstanding service to the people of this state through her artistic contributions; and

WHEREAS, Mrs. Lydia O. Jackson left a living legacy through her many poems, many of which have particular significance to North Dakotans;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA:

That we express our deep sorrow and extend to all members of Mrs. Jackson's family our sincere sympathy and condolence in this their time of sorrow; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to the family of Mrs. Lydia O. Jackson.

Filed February 11, 1985

CHAPTER 872

SENATE MEMORIAL RESOLUTION NO. 2
(Senators Kilander, Berube, Christensen)
(Committee on Memorial Resolutions)

DECEASED SENATE MEMBERS MEMORIALIZED

A memorial resolution for deceased members of the Senate of the State of North Dakota.

WHEREAS, God in His wisdom has seen fit to summon to eternal rest His servants and our former colleagues:

Francis Barth, who served in the 42nd through the 48th Legislative Assemblies, from the 53rd District, died April 11, 1984.

Stella Fritzell, who served in the 43rd through the 48th Legislative Assemblies, from the 43rd District, died April 4, 1984.

Arthur Gronhovd, who served in the 42nd through the 44th Legislative Assemblies, from the 23rd District, died December 8, 1984.

Gail H. Hernet, who served in the 34th through the 42nd Legislative Assemblies, from the 30th District, died October 11, 1983.

Arthur C. Johnson, who served in the 33rd and 34th Legislative Assemblies, from the 9th District, died June 5, 1983.

William Kroeber, who served in the 24th and 25th Legislative Assemblies, from the 36th District, died February 13, 1985.

Edward Leno, Sr., who served in the 29th through the 32nd Legislative Assemblies, from the 35th District, died June 1, 1984.

Richard H. Lynch, who served in the 28th through the 31st Legislative Assemblies, from the 40th District, died June 1, 1983.

Philip J. Sauer, who served in the 32nd and 33rd Legislative Assemblies, from the 38th District, died March 10, 1984.

WHEREAS, today, we, as members of the Senate of the 49th Legislative Assembly of the State of North Dakota, 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 contribution to their fellowmen and their communities;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA:

That we express our keen sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of these, 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 duly enrolled copies of this resolution be presented by the Secretary of State to the surviving families of these deceased senators.

Filed April 1, 1985